

OIO No:11 /ADC/SRV/O&A/2025-26  
F. No: VIII/10-195/SVPIA/DRI/O&A/HQ/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन”, पहलीमंजिल, पुरानेहाईकोर्टक्सामने, नवरंगपुरा, अहमदाबाद – 380009.

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**DIN: 20250471MN000001569E**

**PREAMBLE**

A	फाइलसंख्या / File No.	:	VIII/10-195/SVPIA/DRI/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या—तारीख / Show Cause Notice No. and Date	:	DRI/AZU/GI-02/ENQ-10/2024 dated 22.07.2024
C	मूलआदेशसंख्या / Order-In-Original No.	:	<b>11/ADC/SRV/O&amp;A/2025-26</b>
D	आदेशतिथि / Date of Order-In-Original	:	<b>24.04.2025</b>
E	जारीकरनेकीतारीख / Date of Issue	:	<b>24.04.2025</b>
F	द्वारापारित / Passed By	:	<b>Shree Ram Vishnoi,</b> Additional Commissioner, Customs, Ahmedabad
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	<p>(i) <b>Shri Kaushik kumar Mahipatilal Patel</b>, resident of B-15, Devbhumi Apartment, Nr. Kashiba School, Behind Ajay Tenament-5, Vastral, Ahmedabad-382415, Gujarat.</p> <p>(ii) <b>Shri Anil B. Soni</b>, resident of 2000, Vinobabhav Nagar, Vinzol, Ahmedabad-382445, Gujarat.</p> <p>(iii) <b>Shri Rakeshkumar D. Soni</b>, resident of 1-20-77, Tarbhoda No Pado, Ghivato, Patan, Gujarat-384265.</p> <p>(iv) <b>Smt. Dimpalben Rakeshkumar Soni</b> W/o Shri Rakesh D. Soni, resident of 1-20-77, Tarbhoda No Pado, Ghivato, Patan, Gujarat-384265.</p> <p>(v) <b>Shri Ketan/Chetan@Bangkok.</b></p> <p>(vi) <b>Shri Vijay K. Rajput</b> alias name as Shri Bahadurbhai, resident of 19/411, Shivanand Nagar, Amraiwadi, Ahmedabad-380026.</p>

		<b>(vii) Shri Bharatbhai.</b>
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।	
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील)चौथी मंजिल, हड्डको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।	
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:	
(i)	अपील की एक प्रति और;	
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।	
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।	

**Brief facts of the case:**

Intelligence was gathered by Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad, (hereinafter also referred to as DRI) that gold was being smuggled into India from Bangkok through SVP International Airport, Ahmedabad (hereinafter referred to as SVPI Airport). Intelligence further indicated that 4 (four) passengers namely (i) Shri Kaushikkumar Mahipatlal Patel, Male (ii) Shri Rakeshkumar Dineshkumar Soni, Male (iii) Shri Anil Babulal Soni, Male and (iv) Smt. Dimpalben Rakeshkumar Soni, Female arriving by Thai Flight No. TG 343 on 30.01.2024 from Bangkok to India through SVPI Airport, Ahmedabad were suspected to be smuggling restricted/prohibited goods.

**2.** Acting on the said intelligence, a team of officers of DRI along with officers of Air Intelligence Unit, Customs, SVPI Airport, Ahmedabad, intercepted all the said four passengers namely (i) Shri Kaushikkumar Mahipatlal Patel, Male, (ii) Shri Rakeshkumar Dineshkumar Soni, Male (iii) Shri Anil Babulal Soni, Male and (iv) Smt. Dimpalben Rakeshkumar Soni, Female who were arriving by Thai Flight No. TG 343 on 30.01.2024 from Bangkok to Ahmedabad one by one by verifying their passport when they arrived near the Green Channel. The whole process of interception of all the above four said passengers was conducted under Panchnama dated 30/31.01.2024.

**2.1** Then, DRI officers along with Custom Officers intercepted a male passenger and a female passenger, when the said passenger tried to exit through Green Channel at arrival hall of terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI) Ahmedabad. On being asked about identity of the male passenger by the DRI & Custom officers, the male passenger identified himself as Shri Rakeshkumar Dineshkumar Soni and shown his passport which was an Indian Passport bearing No. T1587245 and that he had travelled from Bangkok to Ahmedabad on 30.01.2024 having boarding pass which shows that he had arrived by Thai Flight No. TG 343 (Seat No.42A) on 30.01.2024 at SVPI Airport, Ahmedabad. The said male passenger had one check-in baggage of purple colour having no marks and one cabin red coloured dufler bag having no marks along with him. On being asked about identity of the female passenger by the DRI & Custom Officers, the female passenger identified herself as Smt. Dimpalben Rakeshkumar Soni, wife of Shri Rakeshkumar Dineshkumar Soni, and shown her passport which was an Indian Passport bearing No. U6678576 and that she had travelled from Bangkok to Ahmedabad on 30.01.2024 having boarding pass which shows that she had arrived by Thai Flight No.TG 343 (Seat No. 42B) on 30.01.2024 at SVPI Airport, Ahmedabad.

**2.2** The DRI officers along with the Custom Officers also intercepted a male passenger, when the said passenger tries to exit through Green Channel at arrival hall of terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI) Ahmedabad. On being asked about identity of the male passenger by the DRI & Custom officers, the male passenger identified himself as Shri Anil Babulal Soni, and shown his passport which was an Indian Passport bearing No. Y9797694 and that he has travelled from Bangkok to Ahmedabad on 30.01.2024 having boarding pass which shows that he had arrived by Thai Flight No. TG 343 (Seat No.34B) on 30.01.2024 at SVPI Airport, Ahmedabad. The said passenger had one hand baggage of black colour having marks as “Polo Club USA” with him.

**2.3** The DRI officers along with Custom Officers also intercepted another male passenger, when the said passenger tried to exit through Green Channel at arrival hall of terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI) Ahmedabad. On being asked about identity of

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the male passenger by the DRI & Custom officers, the male passenger identified himself as Shri Kaushikkumar Mahipatlal Patel, and shown his passport which was an Indian Passport bearing No. T2768912 and that he had travelled from Bangkok to Ahmedabad on 30.01.2024 having boarding pass which shows that he had arrived by Thai Flight No. TG 343 (Seat No.34A) on 30.01.2024 at SVPI Airport, Ahmedabad. The said male passenger had two cabin baggages, one sea-green/grey coloured cloth-based suit case having marks 'Yes Sky" and the other pink coloured dufler bag having marks "Priority" along with him.

2.4 The DRI & the Customs Officers asked all 4 (four) passengers namely (i) Shri Kaushikkumar Mahipatlal Patel (ii) Shri Rakeshkumar Dineshkumar Soni (iii) Shri Anil Babulal Soni and (iv) Smt. Dimpalben Rakeshkumar Soni, if they wanted to declare anything before the Customs, in reply to which all of them denied of having any dutiable or restricted or prohibited items.

2.5 Thereafter, the officers told all the passengers namely (i) Shri Kaushikkumar Mahipatlala Patel (ii) Shri Rakeshkumar Dineshkumar Soni (iii) Shri Anil Babulal Soni and (iv) Smt. Dimpalben Rakeshkumar Soni that they would conduct their personal search as well as examination of their baggages. Therefore, the passengers, namely (i) Shri Kaushikkumar Mahipatlal Patel (ii) Shri Rakeshkumar Dineshkumar Soni (iii) Shri Anil Babulal Soni and (iv) Smt. Dimpalben Rakeshkumar Soni were asked by the officers whether they wished to be searched before a Gazetted officer or Magistrate for which they agreed to being searched in front of a Gazetted officer.

2.6 Now, the DRI & Custom officers asked the passengers (i) Shri Kaushikkumar Mahipatlal Patel (ii) Shri Rakeshkumar Dineshkumar Soni (iii) Shri Anil Babulal Soni and (iv) Smt. Dimpalben Rakeshkumar Soni one by one to pass through the Door Frame Metal Detector (DFMD) machine installed near the green channel in the Arrival hall of Terminal 2 building, after removing all metallic objects from their body / clothes. However, no beep sound was heard indicating that there was no metallic substance on the body/clothes of (i) Shri Kaushikkumar Mahipatlal Patel (ii) Shri Rakeshkumar Dineshkumar Soni (iii) Shri Anil Babulal Soni and (iv) Smt. Dimpalben Rakeshkumar Soni.

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2.7 Thereafter, the DRI Officers asked the said passengers namely (i) Shri Kaushikkumar Mahipatlal Patel (ii) Shri Rakeshkumar Dineshkumar Soni (iii) Shri Anil Babulal Soni and (iv) Smt. Dimpalben Rakeshkumar Soni, to move towards the Baggage Screening Machine (BSM) installed near the green channel in the Arrival hall of Terminal 2 building and put/place the baggages (check-in and cabin) of all the 4 passengers one by one into the Baggage Screening Machine. On examination of baggage images displayed from the Baggage Screening Machine for all the baggages (check-in and cabin), the DRI & Custom officers did not notice any unusual images indicating anything objectionable present in any of the bags of (i) Shri Kaushikkumar Mahipatlala Patel (ii) Shri Rakeshkumar Dineshkumar Soni (iii) Shri Anil Babulal Soni and (iv) Smt. Dimpalben Rakeshkumar Soni.

2.8 The DRI officers carried out the personal Search of (i) Shri Kaushikkumar Mahipatlal Patel, Male, Passport No. T2768912 (Seat No.34A) and noticed that there was some material concealed inside the waist line of the black jeans worn by Shri Kaushikkumar Mahipatlal Patel. Then, the DRI officer started the personal search of Shri Kaushikkumar Mahipatlal Patel and noticed that there was some material concealed inside the waist band of the black jeans worn by Shri Kaushikkumar Mahipatlal Patel. The DRI officer, then torn and opened the waist band of the blue jeans and recovered a long plastic strip containing brown coloured paste like material covered by a transparent white paper. The DRI officer, also recovered another short strip containing brown coloured paste like material from the fly/zip area of the black jeans worn by Shri Kaushikkumar Mahipatlal Patel. The DRI officer also recovered two plastic strips, containing brown coloured paste like material from the bottom hem of the jeans worn by Shri Kaushikkumar Mahipatlal Patel. The customs officer also recovered a white transparent pouch containing brown coloured paste like material from the grey-coloured underwear worn by Shri Kaushikkumar Mahipatlal Patel.

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(4 strips and 1 packet recovered from the personal search of Shri Kaushikkumar Mahipatla Patel)

2.9 The DRI officers then carried out the personal search of Shri Rakeshkumar Dineshkumar Soni, Male, Passport No.T1587245 (Seat No.42A) and noticed that there was some material concealed inside the waist line of the navy blue jeans worn by Shri Rakeshkumar Dineshkumar Soni. Then, the DRI officer started the personal search of Shri Rakeshkumar Dineshkumar Soni and noticed that there was some material concealed inside the waist band of the navy blue navy jeans worn by Shri Rakeshkumar Dineshkumar Soni. The DRI officer, then teared and opened the waist band of the blue jeans and recovered a long plastic strip containing brown coloured paste like material covered by a transparent white paper. The DRI officer, also recovered another short strip containing brown coloured paste like material from the fly/zip area of the navy blue jeans worn by Shri Rakeshkumar Dineshkumar Soni. The DRI officer also recovered two plastic strips, containing brown coloured paste like material from the bottom hem of the jeans worn by Shri Rakeshkumar Dineshkumar Soni. The customs officer also recovered a white transparent pouch containing brown coloured paste like material from the grey coloured underwear worn by Shri Rakeshkumar Dineshkumar Soni.

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(4 strips and 1 packet recovered from the personal search of Shri Rakeshkumar Dineshkumar Soni)

**2.10** The DRI officers also carried out the personal search to Shri Anil Babulal Soni, Male, Passport No. Y9797694 (Seat No.34B) and noticed that there was some material concealed inside the waist line of the blue jeans worn by Shri Anil Babulal Soni. Then, the DRI officer started the personal search of Shri Anil Babulal Soni and noticed that there was some material concealed inside the waist band of the blue jeans worn by Shri Anil Babulal Soni. The DRI officer, then teared and opened the waist band of the blue jeans and recovered a long plastic strip containing brown coloured paste like material covered by a transparent white paper. The DRI officer, also recovered another short strip containing brown coloured paste like material from the fly/zip area of the blue jeans worn by Shri Anil Babulal Soni. The DRI officer also recovered two plastic strips, containing brown coloured paste like material from the bottom hem of the jeans worn by Shri Anil Babulal Soni. The customs officer also recovered a white transparent pouch containing brown coloured paste like material from the grey coloured underwear worn by Shri Anil Babulal Soni.

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(4 strips and 1 packet recovered from the personal search of Shri Anil Babulal Soni)

**2.11** A lady officer of the rank of Superintendent of Customs, AIU, SVPI Airport, Ahmedabad carried out the personal search of Ms Dimpalben Rakeshkumar Soni (W/o Shri Rakesh D. Soni), Female, Passport No. U6678576 (Seat No.34B) and noticed that there was some material concealed inside the waist band of the blue jeans worn by Ms Dimpalben Rakeshkumar Soni. The customs officer, then teared and opened the waist band of the blue jeans and recovered a long plastic strip containing brown coloured paste like material. The customs officer, also recovered another short strip containing brown coloured paste like material from the fly/zip area of the blue jeans worn by Ms Dimpalben Rakeshkumar Soni. The Customs officer also recovered two plastic strips, containing brown coloured paste like material from the bottom hem of the jeans worn by Ms Dimpalben Rakeshkumar Soni. The customs officer also recovered a white transparent pouch containing brown coloured paste like material from the sanitary napkin worn by Ms Dimpalben Rakeshkumar Soni.

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*(4 strips and 1 packet recovered from the personal search of Smt. Dimpalben Rakeshkumar Soni)*

3. After thorough examination of the above four passengers, the DRI officer asked all the passengers regarding the contents of the brown coloured paste like material, to which they replied that it was Gold. Thereafter, in presence of the panchas, the officer called the Government Approved Valuer, and identified him as Shri Kartikey Vasantrai Soni and informed him that some paste like material had been recovered from 4 passengers. The officer then informed the Government Approved Valuer Shri Kartikey Vasantrai Soni that all the passengers had informed that brown coloured paste material inside the pouch and strips contained gold and hence, informed Shri Kartikey Vasantrai Soni to come to the Airport for testing and Valuation of the said material. In reply, the Government Approved Valuer, Shri Kartikey Vasantrai Soni informed the DRI officer that the testing of the said material was only possible at his workshop as gold had to be extracted from such solid or semisolid paste material form by melting it and also informed the address of his workshop.

**3.1** Thereafter, the DRI officers, panchas and the aforementioned 04 passengers approached at the workshop premises of Shri Kartikey Vasantrai Soni, a government approved valuer where Shri Kartikey Vasantrai Soni started the process of converting the said paste like substances recovered from the aforementioned passengers one by one. After processing all the formalities for converting the said paste like substances into a bar, Shri Kartikey Vasantrai Soni, a government approved valuer submitted the purity of the gold bar and weighs the same in an electronic weighing scale, recovered from Shri Kaushikkumar

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Mahipatlal Patel. The DRI officer takes the photograph of the weight of gold bar which is as under:



*(Net Weight of Gold Bars 1413.39 grams recovered from melting of 4 strips and 1 packet recovered from Shri Kaushikkumar Mahipatlal Patel)*

**3.2** Further, Shri Kartikey Vasantrai Soni, a government approved valuer submitted the purity of the gold bar and weighs the same in an electronic weighing scale, recovered from Shri Rakeshkumar Dineshkumar Soni. The photograph of the weight of gold bar affixed as under:



*(Net Weight of Gold Bar - 1529.33 grams recovered from melting of 4 strips and 1 packet recovered from Shri Rakeshkumar Dineshkumar Soni)*

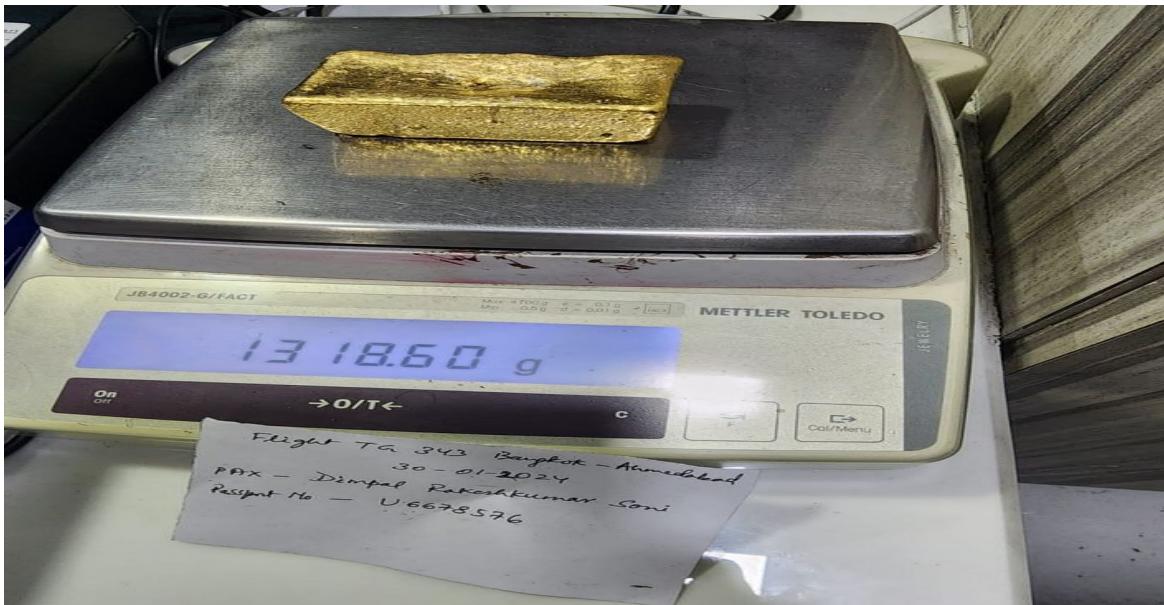
**3.3** Then, Shri Kartikey Vasantrai Soni, a government approved valuer submitted the purity of the gold bar and weighs the same in an electronic weighing scale, recovered from Shri Anil Babulal Soni. The photograph of the weight of gold bar affixed as under:

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(Net Weight of Gold Bar – 1401.06 grams recovered from melting of 4 strips and 1 packet recovered from Shri Anil Babulal Soni)

**3.4** Shri Kartikey Vasantrai Soni, a government approved valuer further submitted the purity of the gold bar and weighs the same in an electronic weighing scale, recovered from Smt. Dimpalben Rakeshkumar Soni. The photograph of the weight of gold bar affixed as under:



(Net Weight of Gold Bar – 1318.60 grams recovered from melting of 4 strips and 1 packet recovered from Shmt. Dimpalben Rakeshkumar Soni)

**4.0** Subsequently, after completion of the procedure of weightment and purity check, Shri Soni Kartikey Vasantrai, submitted the valuation report vide certification no. 1276/2023-24 dated 31.01.2024, 1271/2023-24 dated 31.01.2024, 1275/2023-24 dated 31.01.2024 and 1272/2023-24 dated 31.01.2024 in respect of Shri Kaushikkumar Mahipatlal Patel, Shri Rakeshkumar Dineshkumar Soni, Shri Anil Babulal Soni and Smt. Dimpalben Rakeshkumar Soni respectively. The value of the gold bar has been calculated as per the Notification No. 02/2024-Customs (N.T.) dated 15.01.2024 (gold) and Notification No. 04/2024-Customs (N.T.) dated

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18.01.2024 (exchange rate). The details of the valuation report in respect of all the above gold bars extracted from gold paste recovered from the above 04 passengers are as under: -

Report No. all dated 31.01.2024	Name of the passenger (Shri, Ms)	Gross weight of items recovered (in grams)	No. of Gold Bars extracted	Purity	Net weight (in grams)	Market Value (in Rs.)	Tariff Value (in Rs.)
1276/2023-24	Kaushikkumar M. Patel	1626.57	2	999.0/24Kt	1413.39	9164421	7868936
1271/2023-24	Rakeshkumar D. Soni	1775.93	1	999.0/24Kt	1529.33	9916176	8514422
1275/2023-24	Anil B. Soni	1626.38	1	999.0/24Kt	1401.06	9084473	7800289
1272/2023-24	Dimpalben R. Soni	1530.33	1	999.0/24Kt	1318.6	8549802	7341200

**5. SEIZURE OF THE ABOVE GOLD BARS RECOVERED:** -

**5.1.** Above 05 numbers of gold bars (extracted from semi-solid/paste form) totally weighing of 5662.380 grams, having purity of 999.0 (24 Kt), total market value of Rs.3,67,14,872/- were brought into India in violation of provisions of Customs Act, 1962 and FTP and consequently tantamounted to smuggling of gold and therefore the same appeared to be liable to confiscation under the provisions of Customs Act, 1962. Accordingly, the recovered 05 numbers of gold bars totally weighing of 5662.380 grams, having purity of 999.0 (24 Kt) and total market value of Rs. 3,67,14,872/- (Rupees Three Crore Sixty Seven Lakh Fourteen Thousand Eight Hundred Seventy Two Only) along with garments used for concealment of the said Gold items in form of semi-solid /paste form by the above said 04 passengers were placed under seizure vide seizure order under Section 110 under F. No. DRI/AZU/GI-02/ENQ-10/2024 dated 31.01.2024 and Panchnama dated 30/31.01.2024 (Refer RUD-1).

**5.2.** Further, the above seized 05 gold bars extracted along with the garments used for concealment of gold paste was handed over to the Ware House In charge, SVPI Airport, Ahmedabad vide Ware House Entry No. 5660/2023-24 & 5661/2023-24 (Shri Kaushikkumar Mahipatlal Patel), Ware House Entry No. 5662/2023-24 & 5663/2023-24 (Shri Rakeshkumar Dineshkumar Soni) Ware House Entry No. 5664/2023-24 & 5665/2023-24 (Shri Anil Babulal Soni) and Ware house Entry No.5666/2023-24 & 5667/2023-24 (Smt. Dimpalben Rakeshkumar Soni) all dated 31.01.2024.

**6. STATEMENT OF KEY PERSONS:**

**6.1.** Upon completion of the panchnama proceedings at SVPI Airport, Ahmedabad, summons dated 31.01.2024 were issued to Shri Kaushikkumar Mahipatlal Patel, Shri Rakeshkumar D. Soni, Shri Anil B. Soni and Smt. Dimpalben R. Soni for recording of their statements.

**6.2.** Consequent to the above summon, statement of Shri Kaushikkumar Mahipatlal Patel was recorded under Section 108 of the Customs Act, 1962 on 31.01.2024 and 01.02.2024 wherein he interalia stated that:-

- he went to Bangkok on 27.01.2024 from SVPI Airport, Ahmedabad in search of a job/business prospectus. One person namely Bahadurbhai (Mobile phone 7069361999) informed him of job/business opportunity in Bangkok.
- he came in contact with Shri Bahadurbhai through a common friend namely Ketan, who was in Bangkok. On being asked, to best of his knowledge, he stated that Ketan was working in a grocery store in Bangkok. He owned a commercial pick-up truck that he used to drive for transportation of the goods. However, his EMI for loan taken on purchase of the pick-up got bounced in the last 3 months and it was very difficult to survive and difficult to cater his family's daily needs. Hence, he was looking for some other job/business.
- Shri Bahadurbhai managed his tickets and sent him the tickets through whatsapp.
- Shri Ketan managed for his stay in Bangkok at his place.
- Shri Bahadurbhai's Mobile Number was 7069361999.
- this was the first time, he had visited Bangkok. He further stated that he had visited Dubai in search of job/business but he failed to get job.
- on perusal of panchnama dated 30/31.01.2024 and valuation report No. 1276/2023- 24 dated 31.01.2024, he stated that 1626.57 grams of Gold in paste form was recovered from his worn clothes/undergarments in a concealed manner and upon melting as mentioned in the valuation report, 1413.39 grams (999.0/24 Kt) of pure Gold in the form of bar having Market Value of Rs. 91,64,421/- was recovered from the said gold paste.
- he was intercepted at the Green Channel, on being asked by the officer, he denied to have anything to be declared before the Customs authority at SVPI Airport, Ahmedabad.
- when he reached Bangkok, Ketan suggested him of a house keeping job i.e. sweeping, toilet cleaning etc. and Ketan further informed him that at least for 6-7 months, he need to carry out such kind of job, for which he was not prepared. Hence, he asked Bahadurbhai to manage for his return journey to Ahmedabad. In response, Bahadurbhai informed him that he could manage his return ticket, provided, he would have to carry some luggage to be delivered at Ahmedabad and for that Bahadurbhai asked him to talk with Ketan in this regard.
- he did not have idea about the owner of the said gold. One person in Bangkok, introduced by Ketan as his friend gave him the clothes containing gold in paste form to wear during his return journey to

Ahmedabad. He informed him that on successful delivery of the said gold in Ahmedabad, Shri Kaushikkumar M. Patel would be given Rs. 20,000/- as a commission amount and would also bear his travel/ticket expenses. As he was running short of money and had no option left, Shri Kaushikkumar M. Patel accepted his offer of carrying gold from Bangkok to Ahmedabad.

- the person who had handed over him the clothes in Bangkok, took his photo while dropping him at the airport and further informed him that he would send his photo to his receiver in Ahmedabad and the receiver would identify him on his own when Shri Kaushikkumar M. Patel would come out of the airport.
- he would be getting Rs. 20,000/- on successful delivery of the clothes containing gold paste to the receiver.
- he accepted that it was illegal to smuggle gold without declaring the same before the Customs authorities.
- he had been explained the provisions of Section 111 of the Customs Act, 1962 and after understanding the same he stated that the said gold smuggled in any form was liable to confiscation under the provisions of Customs Act, 1962.

**6.3** Statement of Shri Rakeshkumar Dineshkumar Soni was recorded under Section 108 of the Customs Act, 1962 on 31.01.2024 and 01.02.2024 wherein he interalia stated that:-

- he had gone to Thailand on 27.01.2024 for the purpose of visit Bangkok, he further stated that he came in contact with a person namely Shri Bharatbhai@Ahmedabad at a paan shop at Vastral, Ahmedabad, who asked him to smuggle gold from Bangkok into India. For the said work, he also offered consideration of Rs. 15,000/- along with flight ticket of India to Bangkok and Bangkok to India along with expenses of stay in Bangkok, to which he agreed.
- he did not have any contact details of Shri Bharatbhai@Ahmedabad. He had met him various times only at Paan Gala in Vastral. On being asked his contact no. from him, he had given him contact no belonging to a person named Shri Chetan@Bangkok and asked him to contact Chetan@Bangkok for such smuggling. The said no. had got deleted in his mobile and he did not remember same.
- Shri Bharatbhai arranged flight tickets for Ahmedabad to Bangkok and from Bangkok to Ahmedabad. The said ticket was further given by Bharatbhai during the meeting at Paan Shop.
- he stayed in a Hotel named Classic Homes in Bangkok and Shri Chetan@Bangkok had made all arrangements for staying thereon.
- he had carefully gone through the contents of the panchnama dated 31.01.2024 and perused the same. He further stated that officers intercepted him at green channel and asked him if he wanted to declare anything before customs to which he denied. Further, the officers recovered gold in semi solid/paste form from various parts of his jeans and his undergarment.
- he had carefully gone through the panchnama dated 31.01.2024 and he stated that among the other three passenger, Smt.

Dimpalben Rakeshbhai Soni is his wife, who had also carried Gold on his direction only.

- he had carefully gone through valuation report dated 31.01.2024 and perused the same. In this regard, he confirmed that one Gold Bar weighing 1529.330 grams derived from semi solid substance consisting of Gold & Chemical mixed having Gross weight of 1775.930 grams which was recovered from him. Total market value of the said gold bar was Rs.99,16,176/- & purity is 999.0 24Kt.
- he stated that he did not have any purchase documents or any other document of the said gold. He was not the owner of the said gold. However, at the hotel, Shri Chetan@Bangkok had given him a jeans and a underwear. In the various parts of the jeans and in underwear, the said gold was concealed. After handing over the said jeans and underwear, Shri Chetan@Thialand informed him that around 300 grams of gold have been concealed in the jeans and the underwear and instructed to wear the same while travelling from Bangkok to Ahmedabad for the purpose of smuggling the same into India. But when he wore the said jeans and underwear, he found the same were very heavy. Then, he asked Shri Chetanbhai@Bangkok about the heavier jeans & underwear, in response to which, he told Shri Rakeshkumar D. Soni that they have mixed some chemicals in gold to make it undetectable in DFMD machine and the actual quantity of gold is only 300 grams only.
- he was directed by Shri Chetanbhai@Bangkok that while arriving and exit from SVPI, Airport, Ahmedabad. Shri Bharatbhai himself contact Shri Rakeshkumar D. Patel at the outside of SVPI, Airport, Ahmedabad to collect the said smuggled gold.
- he stated as per discussion, it was decided that after the completion of operation, Rs. 15,000/- was to be given to him as a monetary consideration and the said amount was receivable from Shri Bharatbhai at the time of handing over about the same to Shri Bharatbhai.
- he agreed that it was illegal to smuggle gold without declaring the same to the Customs authorities and would amount to violation of the Baggage Rules, 2016/Customs Act, 1962. He admitted that he had committed such offence by way of violating the said rules/act.

**6.4.** Statement of Shri Anil Babulal Soni was recorded under Section 108 of the Customs Act, 1962 on 31.01.2024 and 01.02.2024 wherein he interalia stated that:-

- he went to Bangkok on 27.01.2024 from SVPI Airport, Ahmedabad for a pleasure trip.
- Shri Bahadurbhai managed his tickets and sent him the tickets through whatsapp. On being asked, he stated that Bahadurbhai offered him a sponsored trip to Bangkok, wherein all the travel/ticket/stay expenses were to be borne by Shri Bahadurbhai and in return he had to bring small quantity of gold during his

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return trip from Bangkok to Ahmedabad and for this he informed him to meet Ketan/Chetan in Bangkok.

- he knew Shri Bahadurbhai since 3-4 years. He was a mechanic and runs a garage at Vastral with the name Friends Auto Garage.
- one person Ketan/Chetan managed for his stay in Bangkok at Hotel Classic Home Co. Ltd.
- he did not have any contact details of Ketan/Chetan.
- Shri Bahadurbhai's mobile number is 7069361999.
- this was the first time that I had visited Bangkok. On being asked, he stated that earlier he had visited Dubai.
- he perused the panchnama dated 31.01.2024 and valuation report No. 1275/2023- 24 dated 31.01.2024. In this regard he further stated that 1626.38 grams of Gold in paste form was recovered from him worn clothes/undergarments in a concealed manner and upon melting as mentioned in the valuation report, 1401.06 grams (999.0/24 Kt) of pure Gold in the form of bar having Market Value of Rs. 90,84,473/- was recovered from the said gold paste.
- he was intercepted at the Green Channel, on being asked by the officer, he denied to have anything to be declared before the Customs authority at SVPI Airport, Ahmedabad.
- he did not have idea about the owner of the said gold. One person of Ketan/Chetan gave him the clothes containing gold in paste form to wear during his return journey to Ahmedabad. Ketan/Chetan informed him that on successful delivery of the said gold in Ahmedabad, he would be given Rs. 20,000/- as a commission amount and would also bear his travel/ticket expenses. In lure of money, he accepted Ketan/Chetan's offer of carrying gold from Bangkok to Ahmedabad.
- he was informed that the receiver would identify him on his own when he would come out of the airport in Ahmedabad.
- he would be getting Rs. 20,000/- on successful delivery of the clothes containing gold paste to the receiver.
- he accept that it was illegal to smuggle gold without declaring the same before the Customs authorities.
- he stated that he and Shri Kaushikumar M. Patel were in the same business of transportation through pick up truck/van, hence, he knew Shri Kaushikkumar Mahipatlal Patel. Further, he stated that previously he went to Dubai with Shri Kaushikumar M. Patel on 01.01.2024 and returned back to Ahmedabad on 07.01.2024. Further, he stated that Shri Kaushikkumar Mahipatlal Patel, Shri Rakeshbhai Soni & Smt. Dimpalben Rakeshkumar Soni also stayed with him at Hotel Classic Home Co. Ltd. in Bangkok.
- he had been explained the provisions of Section 111 of the Customs Act, 1962 and after understanding the same he stated that the said gold smuggled in any form was liable to confiscation under the provisions of Customs Act, 1962.

**6.5.** Statement of Ms. Dimpalben Rakeshkumar Soni was recorded under Section 108 of the Customs Act, 1962 on 31.01.2024 and 01.02.2024 wherein she interalia stated that:-

- she alongwith her husband named Shri Rakeshkumar Dineshbhai Soni had gone Bangkok on 28.01.2024 from Ahmedabad to Mumbai and from Mumbai to Bangkok by Thai flight No. TG-343 and seat No.42B. She stated that she had gone Bangkok for visit purpose on the direction of a person.
- she did not know, who had booked their said ticket as the details was known to her husband.
- she along with her husband had stayed in a Hotel in Bangkok which she did not remember the name of the hotel and the same was known to her husband.
- this was the first trip to Bangkok (Thailand). Earlier to this, she never visited the said place.
- she perused the panchnama dated 31.01.2024 and stated that 1530.33 grams of Gold in paste form was conceal by her in the worn clothes/undergarments in a manner that she could exit from the SVPI, Airpot, Ahmedabat without the acknowledgement of the customs officers, which was recovered from her by the DRI officers and upon melting the said gold past form into solid Gold, resulted in recovery of 1318.600 grams gold bar having purity of 999.0/24 kt.
- she accepted that she denied for having gold with her before the Customs authorities.
- she stated that the actual owner/beneficially of the said smuggled gold was not known to her. Further she stated her husband had the knowledge about this. What her husband guided she did accordingly.
- she stated that she did not know what was the monetary consideration for this attempt to smuggle the said gold into India. Further, she stated that her husband knew better about that.
- she accepted that it was illegal to smuggle gold without declaring the same before the Customs authorities.
- she had been explained the provisions of Section 111 of the Customs Act, 1962 and after understanding the same she stated that the said gold smuggled in any form was liable to confiscation under the provisions of Customs Act, 1962.

**7.** From the investigation conducted and statement of concerned persons, it appears that Shri Kaushikkumar Mahipatlal Patel, Shri Rakeshkumar Dineshkumar Soni, Shri Anil Babulal Soni and Smt Dimpalben Rakeshkumar Soni attempted to smuggle gold in semi-solid form into India in connivance with Shri Bahadurbhai, Shri Bharatbhat and Shri Ketan/Chetan@Bangkok. Further, it evidently appears that the said gold items recovered from the above said four passengers in a very similar manner such as the mode of concealment of gold, garments used for concealment the semi-solid/paste form, flight details of all the passengers, staying arrangement of all the passengers at Bangkok which clearly indicates the same syndicate. Shri Ketan/Chetan@Bangkok was the person, who has actively managed and handed over all the gold items to the respective four persons to smuggle the same into India. Though the quantity of gold illegally imported was split into four different parts and carried by four different persons, all of whom had the common intention to smuggle the gold and evade the applicable custom duty and the all of

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them were also regulated/managed by a common person i.e. Chetan/Ketan@Bangkok. Thus, the acts done by all four persons collectively appears to be as act done by each person individually.

The details of the gold recovered from all 04 passengers are as under:-

Report No. all dated 31.01.2024	Name of the passenger (Shri, Ms)	Gross weight of items recovered (in grams)	No. of Gold Bars extracted	Purity	Net weight (in grams)	Market Value (in Rs.)	Tariff Value (in Rs.)
1276/2023-24	Kaushikkumar M. Patel	1626.57	2	999.0/24Kt	1413.39	9164421	7868936
1271/2023-24	Rakeshkumar D. Soni	1775.93	1	999.0/24Kt	1529.33	9916176	8514422
1275/2023-24	Anil B. Soni	1626.38	1	999.0/24Kt	1401.06	9084473	7800289
1272/2023-24	Dimpalben R. Soni	1530.33	1	999.0/24Kt	1318.6	8549802	7341200

**8. ARREST OF SHRI KAUSHIKKUMAR MAHIPATLAL PATEL, SHRI RAKESHKUMAR DINESHKUMAR SONI, SHRI ANIL BABULAL SONI AND MS. DIMPALBEN RAKESHKUMAR SONI:**

**8.1.** Based on the evidences gathered and the statements recorded as above, it appears that Shri Kaushikkumar Mahipatlal Patel, Shri Rakeshkumar Dineshkumar Soni, Shri Anil Babulal Soni and Smt Dimpalben Rakeshkumar Soni have committed an offence punishable under Customs Act, 1962. It appears that they have smuggled total of 5 (Five) number of gold bars, having total weight of 5662.380 grams, purity of 999.0/24Kt without declaration of the same to the Customs Authorities with a view to evading payment of Customs duty, the said gold attempted to be smuggled by them are liable to confiscation under the provisions of Section 111 of the Customs Act, 1962. During the conducting personal search at the time of interception and subsequent investigation evidently led that all of the four passengers in a very planned manner have attempted such smuggling of gold by adopting the same modus operandi in connivance with Shri Ketan/Chetan@Bangkok. From the above, it evidently established that they have knowingly concerned themselves in an offence punishable under Section 135(1) of the Customs Act, 1962, as they had knowingly involved themselves in dealing/carrying with 5662.380 grams of smuggled Gold having purity of 999.0/24 Carat for total market value of Rs. 3,67,14,872/- and concerned themselves in carrying, removing, depositing, harboring, keeping, concealing of smuggled Gold, which they knew and/or had reasons to believe that the same were liable to confiscation under Section 111 of the Customs Act, 1962. Hence, all four as Shri Kaushikkumar Mahipatlal Patel, Shri Rakeshkumar Dineshkumar Soni, Shri Anil Babulal Soni and Smt Dimpalben Rakeshkumar Soni were arrested on 01.02.2024 at Ahmedabad under the provisions of Section 104 of the Customs Act, 1962 vide Arrest Memo dated 01.02.2024, after getting required order from the competent authority They were further produced before the Hon'ble Court of ACMM, Ahmedabad, who ordered for their judicial custody.

**9. FURTHER INVESTIGATION CONDUCTED: -**

**9.1.** During the course of recording of the statements 31.01.2024 and 01.02.2024 of Shri Kaushikkumar Mahipatlal Patel, Shri Anil Babulal Soni respectively, they inter-alia stated that a person namely Shri

Bahadurbhai had booked ticket for said trip and made all the arrangements for the said activity of the smuggling of gold from Bangkok into India. Shri Bahadurbhai guided/advised them to meet Shri Ketan/Chetan in Bangkok. Shri Ketan/Chetan@Bangkok had managed for staying/fooding in Hotel in Bangkok and one person of Shri Ketan/Chetan@Bangkok had handed over them the clothes containing gold in paste from to wear during their return journey to Ahmedabad. Further, Shri Ketan/Chetan@Bangkok informed them that on successful delivery of the said gold in Ahmedabad, they would be given Rs.20,000/- to each as commission. Both of them in their statements provided the mob. No. of Shri Bahadurbhai i.e. 7069361999.

**9.2.** Accordingly, Customer Application Form (CAF), Subscriber Data records (SDR), Call Data Records (CDR) and certificate with reference to Mobile No. +917069361999 were obtained from the Nodal Officer, Vodafone India.

**9.3.** On examination of the Subscriber Data records, it came to notice that actual name of the subscriber of Mobile No. +917069361999 was Shri Vijay K. Rajput, a resident of 19/411, Shivananad Nagar, Amraiwadi, Ahmedabad-380026. To ascertain evidences & recording of statement, summons dated 14.02.2024 & 05.03.2024 were issued to Shri Vijay K. Rajput to appear on 21.02.2024 and 14.03.2024 for recording of the statement.

**9.4** Shri Vijay K. Rajput vide their letter dated 27.02.2024 replied that they had received the summons on 21.02.2024 at late night. Therefore, he requested to issue for fresh summon. Further, in response to summon dated 05.03.2024, he replied that he had gone for Chardham Yatra and would return in 1<sup>st</sup> week of April and requested to issue fresh summon.

**9.5** Consequent to the non-response to the above summons, the residence premises of Shri Vijay K. Rajput, 19/411, Shivananad Nagar, Amraiwadi, Ahmedabad-380026 was searched on 25.04.2024 under panchnama dated 25.04.2024. During the search proceedings, Shri Vijay K. Rajput was not found present there. Smt. Shardaben Rajput W/o Shri Vijay K. Rajput informed the officers that Shri Vijay K. Rajput, is also known as Shri Bahadurbhai. Further, during the search proceedings nothing objectionable was found. A summon dated 25.04.2024 was also issued to shri Vijay K. Rajput to appear on 29.04.2024 and also to provide the evidence. In response, he replied vide his letter nil dated, that he was out of station for next three months and he could not attend on 29.04.2024 and requested to issue fresh summon.

**9.6.** Further, summons was again issued to Shri Vijay K. Rajput on 17.05.2024. However, he did not join the investigation, which clearly shows his non-cooperation in the investigation.

**9.7.** From the above, it appears that Shri Vijay K. Rajput tried to avoid joining the investigation for saving himself from the clutches of law. Appropriate action under Section 208 of the Bhartiya Nyaya Sanhita 2023 has been initiated against him.

**10.1.** During the course of recording of the statements 31.01.2024 and 01.02.2024 of Shri Rakesh D. Soni and Smt. Dimpalben R. Soni w/o Shri Rakesh D. Soni respectively, they inter-alia stated that they were managed by Shri Bharatbhai@Ahmedabad. Shri Bharatbhai@Ahmedabad had booked ticket for said trip and made all the arrangements for the said activity of the smuggling of gold from Bangkok into India. Shri Bharatbhai@Ahmedabad guided/advised them to meet Shri Ketan/Chetan in Bangkok. Shri Ketan/Chetan@Bangkok had managed for staying/fooding in Hotel in Bangkok and Shri Ketan/Chetan@Bangkok had handed over them the clothes containing gold in paste from to wear during their return journey to Ahmedabad. Further, Shri Ketan/Chetan@Bangkok informed them that on successful delivery of the said gold in Ahmedabad, they would be given Rs.15,000/- to each as commission. Further, Shri Rakesh D. Soni stated that he did not have the mobile no. of Shri Bharatbhai@Ahmedabad. Shri Rakesh D. Soni and Smt. Dimpalben R. Soni w/o Shri Rakesh D. Soni did not provide the whereabouts of Shri Bharatbhai@Ahmedabad.

**10.2.** Analysis of SDR/CDR of all the persons namely Shri Kaushikkumar Mahipatlal Patel using Mob. No. 7984801836, Shri Anil Babulal Soni using Mob No. 9016260733, Shri Rakesh D. Soni using Mob. No.9687214521 and Smt. Dimpalben R. Soni w/o Shri Rakesh D. Soni using Mob. No. 8160252691, it appears that the said Mobile No(s) were used by them respectively. However, no relevant data/details were noticed from the details of CDR.

**11.** Further, from the statement of Shri Kaushikkumar Mahipatlal Patel and Shri Anil Babulal Soni, it appears that Shri Vijay K. Rajput alias name as Shri Bahadurbhai, is one of the key persons in the above smuggling syndicate. Further, from the statement of Shri Rakeshbhai D. Soni and Smt. Dimaplben R. soni, it appears that a person namely Shri Bharatbhai in connivance with Shri Ketan/Chetan@Bangkok had conspired such smuggling of gold into India in association with them. Examining of all the statements of all the four passengers and evidences led to the finding that all the four passengers/carriers namely Shri Kaushikkumar Mahipatlal Patel, Shri Anil Babulal Soni, Shri Rakesh D. Soni. And Smt. Dimpalben R. Soni were managed by a common person namely Shri Ketan/Chetan in Bangkok, who managed and handed over the gold paste to all the four persons for smuggling the same into India. Shri Bahadurbhai and Shri Bharatbhai are key persons in India, who are actively involved in such smuggling of gold through SVPI Airport. Hence, all of the above four passengers/carriers, Shri Ketan/Chetan@Bangkok, Shri Vijay K. Rajput alias Shri Bahadurbhai and Shri Bharatbhai form a syndicate, which in very planned manner attempted to smuggle the gold into India. The said gold paste was concealed in the respective clothes, all the four passengers were wearing with clear intent to smuggle the same.

**12.** With reference to Shri Ketan/Chetan@Bangkok who appeared to be the mastermind of the said smuggling syndicate, it has been found that Shri Ketan/Chetan@Bangkok in connivance with Shri Vijay K. Rajput and Shri Bharatbhai, had managed for staying/fooding in Hotel in Bangkok for all the passengers such as Shri Kaushikkumar Mahipatlal Patel, Shri Anil Babulal Soni, Shri Rakesh D. Soni and Smt. Dimpalben R.

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Soni w/o Shri Rakesh D. Soni. Shri Ketan/Chetan@Bangkok had handed over to all of the persons, clothes containing gold in paste from to wear during their return journey to Ahmedabad for smuggling gold into India through SVPI Airport, Ahmedabad. Further, Shri Kaushikkumar Mahipatlal Patel, Shri Anil Babulal Soni, Shri Rakesh D. Soni and Smt. Dimpalben R. Soni w/o Shri Rakesh D. Soni as admitted in their statements that Shri Ketan/Chetan@Bangkok informed them that on successful delivery of the said gold in Ahmedabad, they would be given Rs.20,000/- and/or Rs. 15,000/- to each as a monetary consideration. All the facts revealed during the investigation clearly established the act of smuggling of gold collectively by all of the above persons.

**13. FORENSIC EXAMINATION OF MOBILE PHONES OF SHRI KAUSHIKKUMAR MAHIPATLAL PATEL, SHRI ANIL BABULAL SONI, SHRI RAKESH D. SONI AND SMT. DIMPALBEN R. SONI W/O SHRI RAKESH D. SONI: -**

**13.1.** During the course of their respective statements of the above persons, they had voluntarily submitted their mobile phones under their statements dated 01.02.2024 for further investigation. The said mobile phones were sent to National Forensic Sciences University, Gandhinagar, for forensic analysis and examination. National Forensic Sciences University, Gandhinagar vide their letter reference case no. NFSU/CoEDF/DEL/60/24-25 dated 5.04.2024 submitted/provided their report along with extracted data.

**13.2.** During the course of analysis of extracted data of Mobile phone i.e. Vivo 1935 belonging to Shri Kaushikkumar M. Patel, provided by NFSU, Gandhinagar, no chats were found with the involved person in the said smuggling case. However, certain images were noticed which have been shown below, which co-relates/establishes his contact with Shri Anil Babulal Soni and Shri Vijay K. Rajput alias name as Bahadurbhai.

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Letter Reference Number	SCN Type	SCN Issue Date **	SCN Status	Status Updated On***	Applicant Reply Received On (if any)****
SCN/325330014/23	PVR Review	2023-12-02	Applicant reply received	2024-01-01	2024-01-01

### Status Tracker

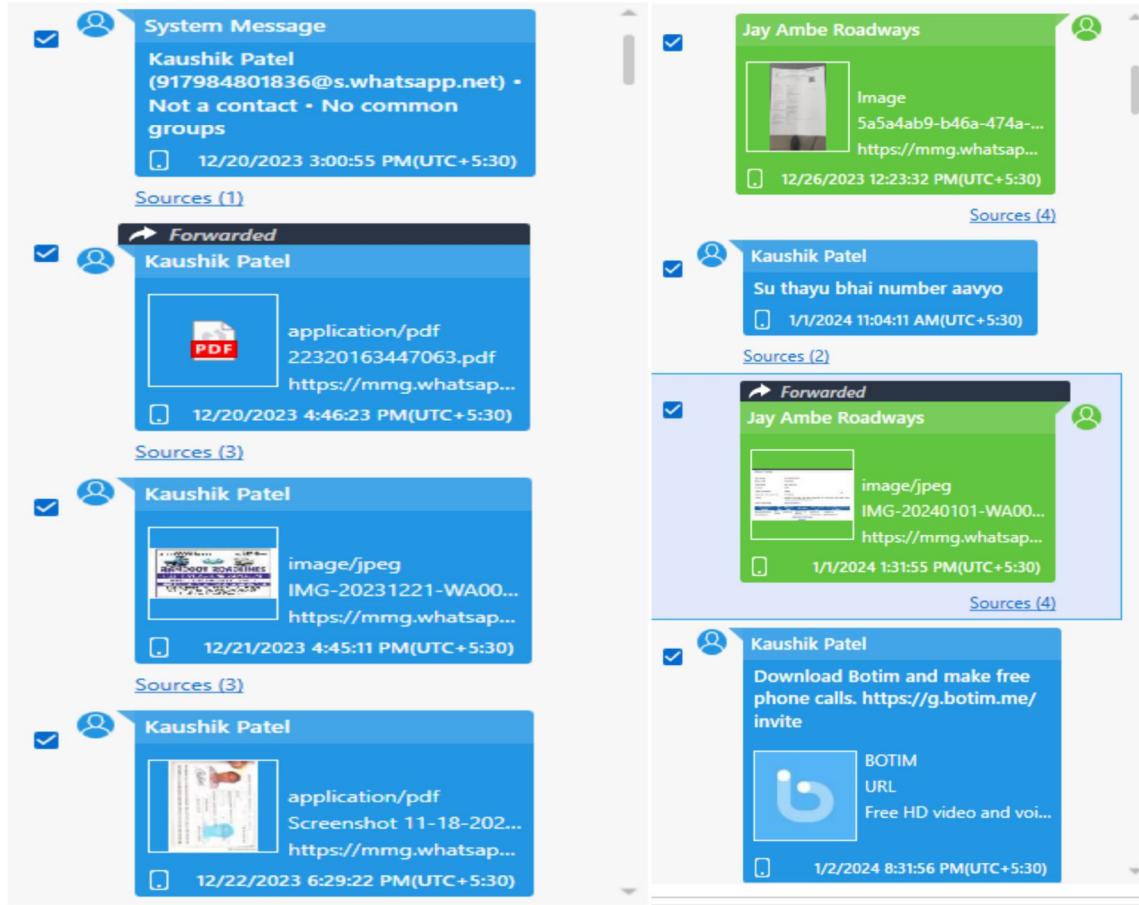
File Number	AH1068638375223
Date of Birth	27/10/1984
Given Name	ANIL BABULAL
Surname	SONI
Type of Application	Tatkaal
Application Received on Date	05/10/2023
Status	Passport Y9797694 has been dispatched on 06/10/2023 via Speed Post Tracking Number PP737813214IN.
Show Cause Notice	<a href="#">Show Cause Notice</a>

Letter Reference Number	SCN Type	SCN Issue Date **	SCN Status	Status Updated On***	Applicant Reply Received On (if any)****
SCN/325330014/23	PVR Review	2023-12-02	Applicant reply received	2024-01-01	2024-01-01

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**13.3.** During the course of analysis of extracted data of Mobile phone i.e. Vivo V2207 belonging to Shri Anil B. Soni, provided by NFSU, Gandhingar, various chats were found with Shri Vijay K. Rajput alias name as Bahadurbhai and with Shri Kaushikkumar M. Patel which have been shown below, which co-relates/establishes his constant touch with Shri Vijay K. Rajput alias name as Bahadurbhai and with Shri Kaushikkumar M. Patel.

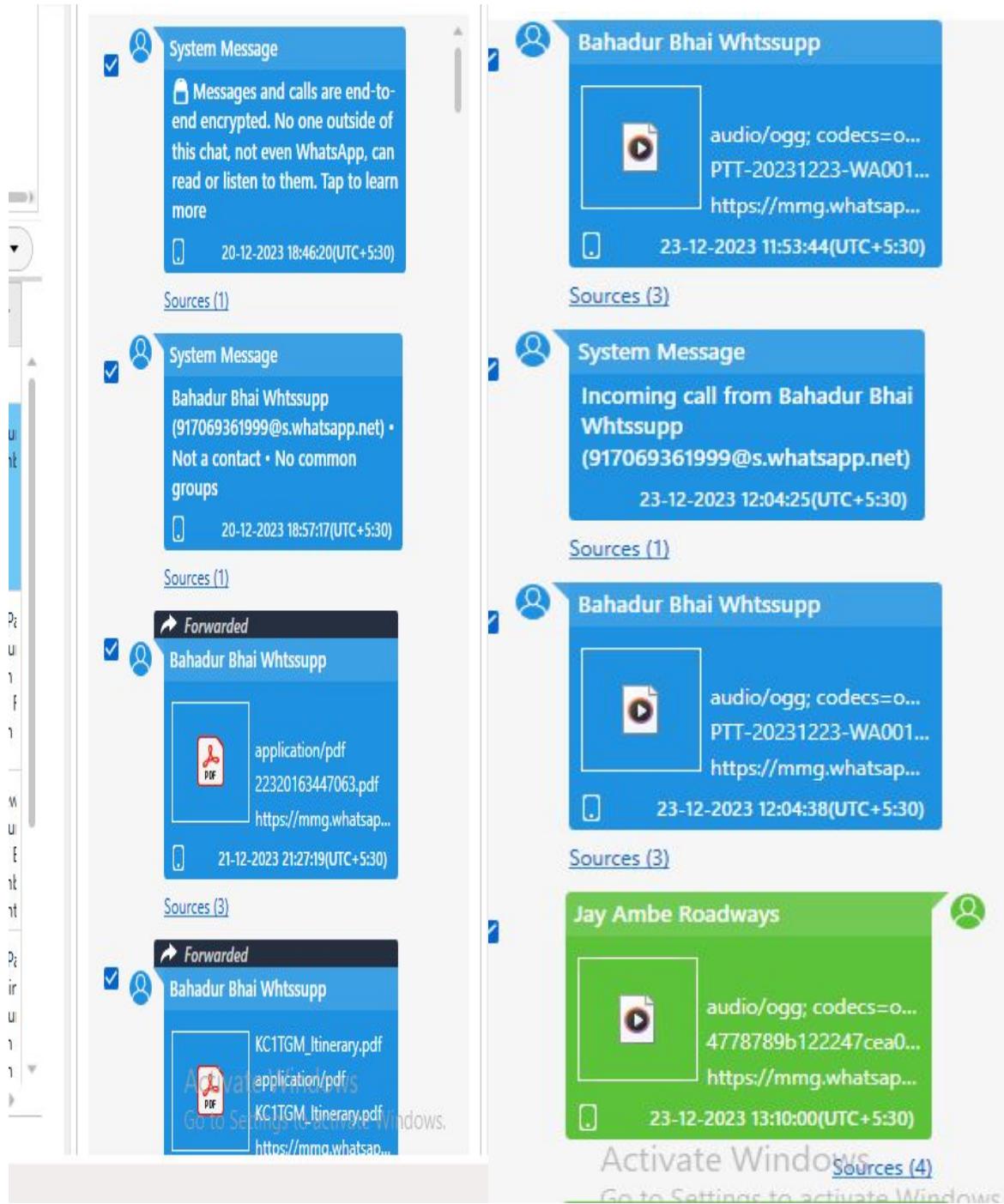
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The above chats are between Shri Anil B. Soni (saved as Jay Ambe Roadways) and Shri Kaushik M. Patel which establish that they knew each other and they were constant touch with each other.

**13.4.** The below mentioned chats are between Shri Anil B. Soni (saved as jay ambe roadways) and Shri Vijay K. Rajput alias name as Bahadurbhai:

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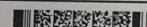


**13.5.** The below mentioned flight ticket alongwith hotel booking voucher forwarded by Shri Vijay K. Rajput shows his involvement for smuggling of Gold into India through SVPI Airport, Ahmedabad. Shri Anil B. Soni in his statement also stated that all the arrangements such as booking of tickets from Ahmedabad to Bangkok and from Bangkok to Ahmedabad, lodging and fooding facilitation at Bangkok were made by Shri Vijay K. Rajput alias name as Shri Bahadurbhai.

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 <p>PASSENGER: SONI ANIL BABULAL MR (ADT) BOOKING REFERENCE: 5KYR4W TICKET NUMBER: 098 5105820462</p> <p>Issuing office: TRAVEL BOUTIQUE ONLINE, GF FLOOR 728, UDYOG VIHAR PHASE V, GURGAON 122016 Date of issue: 23Jan2024</p>		 <p><b>HOTEL BOOKING VOUCHER</b></p> <table border="1"> <tr> <td colspan="2">BOOKING DETAIL</td> <td>25 JAN 2024</td> </tr> <tr> <td>HOTEL NAME</td> <td>CONFIRMATION NO</td> <td>CHECK INN DATE AND TIME</td> </tr> <tr> <td>Classic Home Co.Ltd</td> <td>HOV1344</td> <td>28 JAN 2024</td> </tr> <tr> <td colspan="2">VOUCHER BOOKING ID:</td> <td>CHECK INN TIME -10 AM</td> </tr> <tr> <td colspan="2">RESIDENCY / NATIONALITY:</td> <td>CHECK OUT DATE AND TIME</td> </tr> <tr> <td colspan="2">INDIAN</td> <td>31 FEB 2024</td> </tr> <tr> <td colspan="2"></td> <td>CHECK OUT TIME -12 PM</td> </tr> <tr> <td colspan="3"> <table border="1"> <tr> <td>GUEST NAME</td> <td>MR. ANIL BABULAL SONI</td> </tr> <tr> <td>ADULTS:</td> <td>01</td> <td>ARRIVAL BY:</td> <td>OWN</td> </tr> <tr> <td>INFANT:</td> <td>-</td> <td>DEPARTURE BY:</td> <td>OWN</td> </tr> <tr> <td>CHILDREN (Below 6 Years):</td> <td>-</td> <td colspan="2">INCLUSIVE OF FOOD PLAN: EPAL</td> </tr> <tr> <td>CHILDREN (Below 12 Years):</td> <td>-</td> <td colspan="2">Without Meal</td> </tr> <tr> <td>ROOM CATEGORY:</td> <td>-</td> </tr> <tr> <td>NUMBER OF NIGHT/S:</td> <td>04 NIGHT</td> </tr> <tr> <td>NUMBER OF ROOMS</td> <td>01</td> </tr> </table> </td> </tr> <tr> <td>ROOM</td> <td>ROOM TYPE / BOARD BASIS</td> <td>Guest Name</td> <td>Adult</td> <td>CHILDREN (Below 12 Years)</td> <td>CHILDREN (Below 6 Years)</td> </tr> <tr> <td>01</td> <td>EPAL</td> <td>MR. ANIL BABULAL SONI</td> <td>01</td> <td>-</td> <td>-</td> </tr> </table> <p>TAXES /S.C   ALL INCLUSIVE   RECEIVED PAYMENT: FULL INSTRUCTION: BILL TO SAFAR TOURISM   REMAINING BALANCE: NIL NOTE: COLLECT ALL EXTRAS DIRECTLY FROM GUEST   Have a Pleasant &amp; Memorable holiday with us.....</p> <p>Address: 4 Ratan Complex, opp. Yes Bank, Near National Handloom, C.G. Road, Ahmedabad-380006 Web: www.travelryder.com - Email: info@travelryder.com - Mo. +91 9725145353</p>		BOOKING DETAIL		25 JAN 2024	HOTEL NAME	CONFIRMATION NO	CHECK INN DATE AND TIME	Classic Home Co.Ltd	HOV1344	28 JAN 2024	VOUCHER BOOKING ID:		CHECK INN TIME -10 AM	RESIDENCY / NATIONALITY:		CHECK OUT DATE AND TIME	INDIAN		31 FEB 2024			CHECK OUT TIME -12 PM	<table border="1"> <tr> <td>GUEST NAME</td> <td>MR. ANIL BABULAL SONI</td> </tr> <tr> <td>ADULTS:</td> <td>01</td> <td>ARRIVAL BY:</td> <td>OWN</td> </tr> <tr> <td>INFANT:</td> <td>-</td> <td>DEPARTURE BY:</td> <td>OWN</td> </tr> <tr> <td>CHILDREN (Below 6 Years):</td> <td>-</td> <td colspan="2">INCLUSIVE OF FOOD PLAN: EPAL</td> </tr> <tr> <td>CHILDREN (Below 12 Years):</td> <td>-</td> <td colspan="2">Without Meal</td> </tr> <tr> <td>ROOM CATEGORY:</td> <td>-</td> </tr> <tr> <td>NUMBER OF NIGHT/S:</td> <td>04 NIGHT</td> </tr> <tr> <td>NUMBER OF ROOMS</td> <td>01</td> </tr> </table>			GUEST NAME	MR. ANIL BABULAL SONI	ADULTS:	01	ARRIVAL BY:	OWN	INFANT:	-	DEPARTURE BY:	OWN	CHILDREN (Below 6 Years):	-	INCLUSIVE OF FOOD PLAN: EPAL		CHILDREN (Below 12 Years):	-	Without Meal		ROOM CATEGORY:	-	NUMBER OF NIGHT/S:	04 NIGHT	NUMBER OF ROOMS	01	ROOM	ROOM TYPE / BOARD BASIS	Guest Name	Adult	CHILDREN (Below 12 Years)	CHILDREN (Below 6 Years)	01	EPAL	MR. ANIL BABULAL SONI	01	-	-
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### IMAGE

Your Flight Ticket - 3870869124																			
Agency : TRAVEL RYDER LLP Booking ID : 3870869124 Booked On : 28 Jan 2024 01:50 AM																			
 <p>Thai Airways International R18001021225/61395599 S66373777 A-26828950</p>		<p>Booking Agent 9725145353</p>		<p>AIRLINE PNR <b>6DAOLS</b> GDS PNR : 6T47XP</p>															
<b>Onward Flight Detail</b> Flight 1 Thai Airways International TG-343 V - VLOSTC Refundable		<b>Confirmed</b> <b>Class: Economy</b> Departing Bangkok(BKK) Tue,30 Jan 2024,08:35 PM		Arriving Ahmedabad (AMD) Tue,30 Jan 2024,11:55 PM Terminal 2															
<b>Checked In Baggage Allowed</b> Adult - 25KG				Non-Stop 04.50 Hrs															
<b>Cabin Baggage Allowed</b> Adult - 7KG																			
<b>Passenger(s) Details</b> <table border="1"> <tr> <td>Sr No.</td> <td>Passenger Name</td> <td>Frequent Flyer Type</td> <td>Email</td> <td>Web Check In</td> <td>Mobile No.</td> <td>Ticket No: Thai Airways International</td> </tr> <tr> <td>1</td> <td>Mr ANIL BABULAL SONI</td> <td>Adult</td> <td>TRAVELRYDERLLP@GMAIL.COM</td> <td>9725145353</td> <td>2175105677308</td> <td></td> </tr> </table>						Sr No.	Passenger Name	Frequent Flyer Type	Email	Web Check In	Mobile No.	Ticket No: Thai Airways International	1	Mr ANIL BABULAL SONI	Adult	TRAVELRYDERLLP@GMAIL.COM	9725145353	2175105677308	
Sr No.	Passenger Name	Frequent Flyer Type	Email	Web Check In	Mobile No.	Ticket No: Thai Airways International													
1	Mr ANIL BABULAL SONI	Adult	TRAVELRYDERLLP@GMAIL.COM	9725145353	2175105677308														
Mr ANIL BABULAL SONI      Bangkok - Ahmedabad																			
																			
<b>Customer Contact Details</b> Email: TRAVELRYDERLLP@GMAIL.COM Contact No.:(0091)9725145353																			

**13.6.** During the course of analysis of extracted data of Mobile phone i.e. Realme Narzo 10A & OPPO A9 belonging to Shri Rakesh D. Soni and his wife Smt. Dimpalben R. Soni respectively, provided by NFSU, Gandhingar, some chats were found between Shri Rakesh D. Soni and a person named Shri Gauravkumar Amdavad (as saved in mobile) where Shri Guravkumar Amdavad (Mobile No. 9054545579) had shared the flight tickets to Shri Rakesh D. Soni and further Shri Rakesh D. Soni had

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further shared the said tickets to his wife Smt. Dimpalben R. Soni for journey from Bangkok to Ahmedabad, the same have been shown below, which co-relate/establish his contact with Shri Guravkumar Amdavad.

The screenshot shows a WhatsApp conversation history. It includes the following messages:

- System Message:** Incoming call from Guravkumar Amdavad (919054545579@s.whatsapp.net) on 30-01-2024 12:24:56(UTC+5:30). Sources (1).
- Forwarded:** Guravkumar Amdavad sent TKT BKK AMDD.pdf (application/pdf) on 30-01-2024 12:31:31(UTC+5:30). Sources (3).
- Forwarded:** Guravkumar Amdavad sent TKT BKK AMD 03.pdf (application/pdf) on 30-01-2024 12:31:31(UTC+5:30). Sources (3).
- Rakesh Soni:** Hay on 30-01-2024 17:26:36(UTC+5:30). Sources (3).
- Guravkumar Amdavad:** Bolo on 30-01-2024 18:14:00(UTC+5:30). Sources (2).
- System Message:** Missed call from Guravkumar Amdavad (919054545579@s.whatsapp.net) on 30-01-2024 18:14:02(UTC+5:30). Sources (1).
- Rakesh Soni:** Airport pohchi gaya on 30-01-2024 18:15:03(UTC+5:30). Sources (3).
- Guravkumar Amdavad:** Bottl lavjo on 30-01-2024 18:15:22(UTC+5:30). Sources (2).
- Rakesh Soni:** 8,35 on 30-01-2024 18:15:25(UTC+5:30). Sources (3).
- Guravkumar Amdavad:** Bottl lavjo on 30-01-2024 18:15:48(UTC+5:30). Sources (2).

The screenshot shows a flight ticket from TRAVEL RYDER LLP. The ticket details are as follows:

**Flight Details:**

- Onward Flight Detail:** Flight 1, Thai Airways International, TG-343, V - VLOSTC Refundable.
- Departure:** Bangkok(BKK) on Tue, 30 Jan 2024, 08:35 PM.
- Arrival:** Ahmedabad (AMD) on Tue, 30 Jan 2024, 11:55 PM.
- Flight Type:** Economy.
- Baggage:** Checked In Baggage Allowed (Adult - 25KG) and Cabin Baggage Allowed (Adult - 7KG).
- Flight Number:** 6D8IPS.
- Booking ID:** 4896732763.
- Booking Date:** 28 Jan 2024 01:25 AM.

**Passenger(s) Details:**

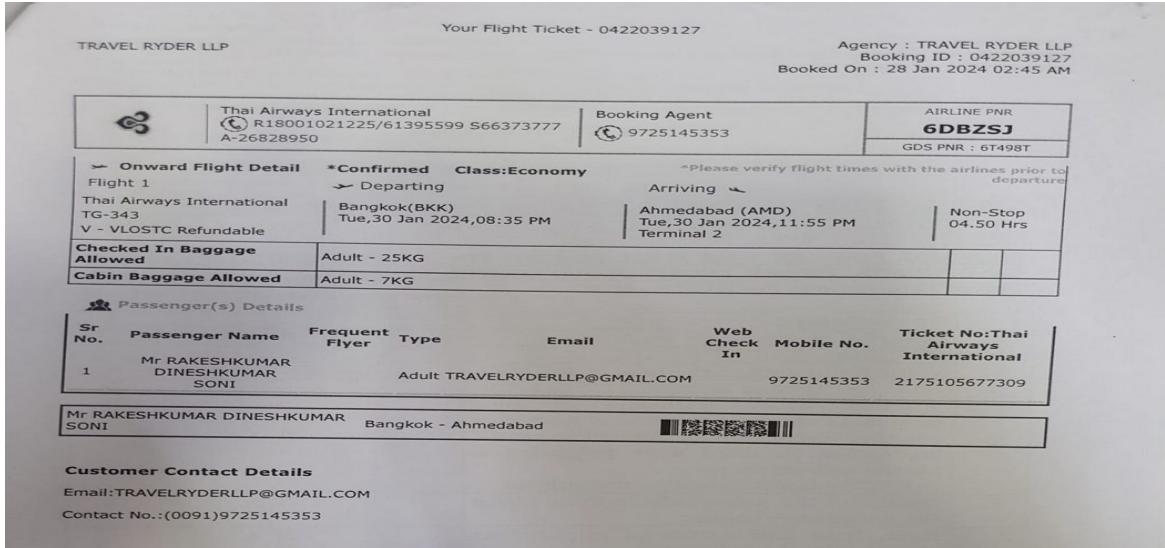
Sr No.	Passenger Name	Frequent Flyer	Type	Email	Web Check In	Mobile No.	Ticket No: Thai Airways International
1	Mrs DIMPALBEN RAKESHKUMAR SONI		Adult	TRAVELRYDERLLP@GMAIL.COM	9725145353	217-5105677305	

**Customer Contact Details:**

- Email: TRAVELRYDERLLP@GMAIL.COM
- Contact No.: (0091)9725145353

Ticket of Smt. Dimpalben R. Soni from Bangkok to Ahmedabad on 30.01.2024.

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Ticket of Shri Rakesh D. Soni from Bangkok to Ahmedabad on 30.01.2024

**13.7.** SDR obtained from the respective service provider in respect of Shri Guravkumar Amdavad (Mobile No. 9054545579) revealed that the said mobile no. was registered on the name of Shri Gaurav Soni, A-10, Karnavati Avenue, CTM, Ahmedabad – 380026. Summon to Shri Gaurav Soni was issued on 17.05.2024 for recording of statement & gathering of evidences, if any. However, the said summon got returned to this office undelivered with postal remark as ‘unclaimed’. Hence, it may be treated that Shri Gaurav Soni did not join the investigation. Further, a summon was also issued on 17.05.2024 to Shri Rakesh D. Soni for recording of statement. However, the said summon also got returned to this office undelivered with postal remark as “left”.

**13.8.** Investigation conducted and statements of Shri Kaushikkumar Mahipatlal Patel, Shri Anil Babulal Soni, Shri Rakesh D. soni and Smt. Dimpalben R. Soni W/o Shri Rakesh D. Soni, evidently led to the findings that, in a very planned manner, Shri Kaushikkumar Mahipatlal Patel, Shri Anil Babulal Soni, Shri Rakesh D. soni and Smt. Dimpalben R. Soni attempted to smuggle 05 gold bars (extracted from semi-solid/paste form recovered from them) into India through SVPI Airport Ahmedabad from Bangkok in association with Shri Ketan/Chetan@Bangkok, Shri Vijay K. Rajput & Bharatbhai. The said semi gold in solid/paste form was recovered by the officers of DRI during the course of interception & subsequently conducting physical examination of Shri Kaushikkumar Mahipatlal Patel, Shri Anil Babulal Soni, Shri Rakesh D. soni and Smt. Dimpalben R. Soni. They also in their statements inter-alia stated that they had not bought the said gold and they did not have any purchase documents of such gold items. They also inter-alia stated that all such

gold items along with cloths were given by Shri Ketan/Che~~tan~~@Bangkok for smuggling into India. They also in their statements inter-alia admitted that they had agreed to smuggle gold in lieu of consideration/commission of Rs. 20,000/- and/or Rs. 15,000/- along with flight tickets for journey of themselves from India to Bangkok and from Bangkok to India. Further, it has also been found that Shri Vijay K. Rajput alias name as Shri Bahadurbhai and Shri Bharatbhai had managed flight tickets of Ahmedabad to Bangkok and from Bangkok to Ahmedabad, lodging and fooding facilitation in Bangkok of Shri Kaushikkumar Mahipatlal Patel & Shri Anil Babulal Soni and Shri Rakesh D. soni & Smt. Dimpalben R. Soni W/o Shri Rakesh D. Soni respectively in connivance with Shri Chetan/Che~~tan~~@Bangkok.

**13.9.** Analysis of call details, examination of data extracted from forensic examination of mobile phones voluntarily submitted by Shri Kaushikkumar Mahipatlal Patel, Shri Anil Babulal Soni, Shri Rakesh D. soni and Smt. Dimpalben R. Soni W/o Shri Rakesh D. Soni and statements of all the above persons explicitly indicated that Shri Kaushikkumar Mahipatlal Patel, Shri Anil Babulal Soni, Shri Rakesh D. soni and Smt. Dimpalben R. Soni W/o Shri Rakesh D. Soni were in touch with one another for performing such smuggling of gold into India, which was managed/guided by Shri Chetan/Che~~tan~~@Bangkok in respect of all the above four passengers. Hence, it evidently appears that all of them are part of the syndicate with a common intent to smuggle gold into India.

#### **14. SUMMATION**

**14.1.** From all the foregoing paras, it appears that 05 gold bars (extracted from semi-solid/paste form) having purity of 999.0/24 Carat, totally weighing of 5662.380 grams and having a market value of Rs. 3,67,14,872/- were attempted to be smuggled by Shri Kaushikkumar Mahipatlal Patel, Shri Anil Babulal Soni, Shri Rakesh D. soni and Smt. Dimpalben R. Soni W/o Shri Rakesh D. Soni into India through SVPI Aiport Ahmedabad from Bangkok.

**14.2.** From the above, it evidently appears that process of smuggling of such gold has been undertaken by Shri Kaushikkumar Mahipatlal Patel, Shri Anil Babulal Soni, Shri Rakesh D. soni and Smt. Dimpalben R. Soni in connivance with Shri Vijay K. Rajput alias name as Shri Bahadurbhai,

Shri Bharatbhai and Shri Ketan/Chetan@Bangkok. Shri Bahadurbhai, Shri Bharatbhai had conspired such type of smuggling activity of Gold in connivance with Shri Chetan/Ketan@Bangkok and they recruited the above said passengers to perform such types illegal activities for smuggling of gold into India in lieu of monetary consideration/commission and they all formed a syndicate of smuggling of above said gold into India. Shri Ketan/Chetan@Bangkok, Shri Vijay K. Rajput alias name as Shri Bahadurbhai and Shri Bharatbhai appear to be kingpin/mastermind/beneficiary owner of the recovered 05 gold bars. Shri Kaushikkumar Mahipatlal Patel, Shri Anil Babulal Soni, Shri Rakesh D. soni and Smt. Dimpalben R. Soni W/o Shri Rakesh D. Soni undertook such smuggling activities in lieu of consideration/commission. Hence, it appears that all the above persons involved in the instant case had the common intention to smuggle the gold and evade the applicable custom duty. Hence, it appears that Shri Kaushikkumar Mahipatlal Patel, Shri Anil Babulal Soni, Shri Rakesh D. soni and Smt. Dimpalben R. Soni, Shri Vijay K. Rajput alias name as Shri Bahadurbhai, Shri Bharatbhai and Shri Ketan/Chetan@Bangkok are part of the same syndicate for smuggling of above gold bars.

**14.3.** In view of above, 05 gold bars having purity of 999.0/24 Carat, totally weighing of 5662.380 grams & having a market value of Rs.3,67,14,872/- extracted from gold paste recovered from Shri Kaushikkumar Mahipatlal Patel, Shri Anil Babulal Soni, Shri Rakesh D. soni and Smt. Dimpalben R. Soni are to be treated as smuggled goods as defined under Section 2(39) and prohibited goods as defined under Section 2(33) of the Customs Act, 1962 as the same were brought into India attempting to smuggle into India by violating the provisions of the Customs Act, 1962 and FTP. The above gold bars

**14.4.** From all the above foregoing paras, it evidently appears that Shri Kaushikkumar Mahipatlal Patel, Shri Anil Babulal Soni, Shri Rakesh D. soni and Smt. Dimpalben R. Soni with the nexus of Shri Vijay K. Rajput alias name as Shri Bahadurbhai, Shri Bharatbhai and Shri Ketan/Chetan@Bangkok have conspired to smuggle the above 05 gold bars having purity of 999.0/24 Carat, totally weighing of 5662.380 grams & having a market value of Rs.3,67,14,872/-. The offences committed by Shri Kaushikkumar Mahipatlal Patel, Shri Anil Babulal Soni, Shri Rakesh

D. soni and Smt. Dimpalben R. Soni have also been admitted in their respective statements recorded under Section 108 of the Customs Act, 1962 as mentioned in para supra. The market value of above gold is Rs. 3,67,14,872/-, which is more than one crore. The same were seized under Section 110 of the Customs Act, 1962 as the same were liable to confiscation under Section 111 of the Customs Act, 1962.

#### **15. LEGAL PROVISIONS:**

**15.1** According to the Customs Baggage Declaration (Amendment) Regulations, 2016 issued vide Notification 31/2016 (NT) dated 01.03.2016, all passengers who come to India and have anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage under Section 77 of the Customs Act, 1962.

**15.2.** All the dutiable articles imported into India by a passenger in his baggage are classified under CTH 9803. As per Section 77 of the Customs Act, 1962, the owner of any baggage shall for the purpose of clearing it, make a declaration of its contents to the proper officer. As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992, no export or import shall be made by any person except in accordance with the provisions of Foreign Trade (Development and Regulation) Act, 1992, the Rules and Orders made there under and the Foreign Trade Policy for the time being in force.

**15.3.** In terms of Para 2.26 (a) of the Foreign Trade Policy 2015-2020, only bona fide household goods and personal effects are allowed to be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by the Ministry of Finance. The gold can be imported by the banks (authorized by RBI) and the agencies nominated for the said purpose under Para 4.41 of Chapter-4 of Foreign Trade Policy or by "Eligible Passenger" as per the provision of Notification No. 50/2017- Customs dated 30.06.2017 (Sr.No. 356). As per Notification No. 50/2017- Customs dated 30.06.2017, the 'eligible passenger' means passenger of Indian origin or a passenger holding valid passport issued under the Passport Act, 1967 who is coming to India after a period of not less than 6 months of stay abroad.

The above said legal provisions are reproduced below:

**Para 2.26 (a) of the Foreign Trade Policy 2015-2020:**

Bona-fide household goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by the Ministry of Finance.

**Para 4.41 of the Foreign Trade Policy 2015-2020:*****Nominated Agencies:-***

(i) Exporters may obtain gold / silver / platinum from Nominated Agency. Exporter in EOU and units in SEZ would be governed by the respective provisions of Chapter-6 of FTP / SEZ Rules, respectively.

(ii) Nominated Agencies are MMTC Ltd, The Handicraft and Handlooms Exports Corporation of India Ltd, The State Trading Corporation of India Ltd, PEC Ltd, STCL Ltd, MSTC Ltd, and Diamond India Limited.

(iii) Notwithstanding any provision relating to import of gold by Nominated Agencies under Foreign Trade Policy (2015-2020), the import of gold by Four Star and Five Star Houses with Nominated Agency Certificate is subjected to actual user condition and are permitted to import gold as input only for the purpose of manufacture and export by themselves during the remaining validity period of the Nominated Agency certificate.

(iv) Reserve Bank of India can authorize any bank as Nominated Agency.

(v) Procedure for import of precious metal by Nominated Agency (other than those authorized by Reserve Bank of India and the Gems & Jewellery units operating under EOU and SEZ schemes) and the monitoring mechanism thereof shall be as per the provisions laid down in Hand Book of Procedures.

(vi) A bank authorized by Reserve Bank of India is allowed export of gold scrap for refining and import standard gold bars as per Reserve Bank of India guidelines.

**15.4.** Condition 41 of Sl. No.356 of CBIC Customs Notification No. 50/2017 dated 30.06.2017 where the condition regarding import of gold by passenger is regulated in the following manner:

If,

1. (a) the duty is paid in convertible foreign currency;
- (b) the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of silver per eligible passenger; and
2. the **gold** or silver is,-
  - (a) carried by the eligible passenger at the time of his arrival in India, or
  - (b) the total quantity of gold under items (i) and (ii) of Sr. No. 356 does not exceed one kilogram and the quantity of silver under Sr. No. 357 does not exceed ten kilograms per eligible passenger; and
  - (c) is taken delivery of from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Ltd., subject to the conditions 1 ;

*Provided that such **eligible passenger** files a declaration in the prescribed form before the proper officer of customs at the time of his arrival in India declaring his intention to take delivery of the gold or silver from such a customs bonded warehouse and pays the duty leivable thereon before his clearance from customs.*

*Explanation.- For the purposes of this notification, “**eligible passenger**” means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not availed of the exemption under this notification or under the notification being superseded at any time of such short visits.*

#### **15.5. Baggage Rule, 2016 –**

**15.5.1.** As per Rule 5 of the Baggage Rules, 2016, “a passenger residing abroad for more than one year, on return to India, shall be allowed clearance free of duty in his bona fide baggage of jewelry up to a weight, of twenty grams with a value cap of fifty thousand rupees if brought by a gentleman passenger, or forty grams with a value cap of one lakh rupees, if brought by a lady passenger”.

**15.5.2.** A combined reading of the above-mentioned legal provisions under Foreign Trade Regulations, the Customs Act, 1962 and the notifications issued therein - clearly indicate that import of gold including gold jewellery through Baggage is Restricted and conditions have been imposed on the said imports by a passenger such as he/she should be of Indian origin or an Indian passport holder with minimum six months stay abroad etc. Only passengers who satisfy those mandatory conditions can import gold as a part of their bona fide personal baggage and the same has to be declared to the Customs at the time of their arrival and applicable duty paid. These conditions are nothing but restrictions imposed on the import of gold through passenger baggage. Further, from the foregoing legal provisions of Foreign Trade Policy, 2015-2020 read with Reserve Bank of India circulars issued under Foreign Exchange Management Act (FEMA), Notifications issued by the Government of India and Circular issued by CBIC, it is evident that no one can import gold in any other manner as not explicitly stated/permitted above.

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**15.6.1.** In exercise of powers conferred by Section 3 read with Section 5 of FT (D&R) Act, 1962, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government vide DGFT's Notification No. 49/2015-2020 dated 5<sup>th</sup> January, 2022 made amendment in import policy conditions of gold in any form Chapter 71 of ITC (HS), 2017, Schedule-1 (Import Policy) as under:

ITC(HS) Code	Item Description	Policy	Existing Policy Condition	Revised Policy Condition
71061000	Powder	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).	No change in existing Policy Condition
71069110	Unwrought: Grains	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).	No change in existing Policy Condition
71069190	Unwrought: Others		Silver dore can be imported by refineries against a license with AU condition.	
71069210	Sheets, plates, strips, tubes and pipes	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT(for other agencies).	No change in existing Policy Condition
71069290	Other	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT(for other agencies).	No change in existing Policy Condition
71081100	Powder	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).	No change in existing Policy Condition

71081200	Other unwrought forms	Restricted	<p>Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).</p> <p>Gold dore can be imported by refineries against a license with AU condition.</p>	<p>Import is allowed only through nominated agencies as notified by RBI (in case of banks), DGFT (for other agencies) and IFSCA(for qualified jewellers through India International Bullion Exchange)</p> <p>Gold Dore can be imported by refineries against an import license with AU condition.</p>
71081300	Other semi-manufactured forms	Restricted	<p>Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).</p>	No change in existing Policy Condition
71189000	Other	Restricted	<p>Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).</p>	<p>Import is allowed only through nominated agencies as notified by RBI (in case of banks), DGFT (for other agencies) and IFSCA(for qualified jewellers through India International Bullion Exchange).</p>

**15.6.2.** As per the said Notification, the expression “*Gold in any form*” includes *gold in any form above 22 carats* under Chapter 71 of ITC (HS), 2017, Schedule-I (Import Policy).

**15.7.** Further, as per Section 2(33) of the Customs Act, 1962, ‘prohibited goods’ means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with, implying that any goods imported in violation of the conditions subject to which the goods are permitted to be imported are nothing but prohibited goods. Hence, the smuggling of gold bars having purity of 999.0/24 Ct recovered from Shri Kaushikkumar Mahipatlal Patel, Shri Anil Babulal Soni, Shri Rakesh D. soni and Smt. Dimpalben R. Soni W/o Shri Rakesh D. Soni are in contravention of the Foreign Trade Policy 2015-20 read with the relevant notification issued under the Customs Act, 1962 & rules made thereunder, shall have to be treated as prohibited, by virtue of not being in conformity with the conditions imposed in the said Regulations. It is pertinent to note that any prohibition applies to every type of prohibition which may be complete or partial and even a restriction on import or export is to an extent a prohibition. Hence the restrictions imposed on the said imports are to an extent a prohibition and any violation of the said conditions/restrictions would make the impugned goods liable for confiscation under Section 111 of Customs Act, 1962.

**15.8.** Therefore, it appears that import of gold in contravention of the Foreign Trade Policy 2015-20 read with the Customs Act, 1962 and RBI circulars, as well as the Rules and regulations

mentioned supra, shall have to be treated as prohibited, by virtue of not being in conformity with the conditions imposed in said Regulations.

**Section 2(33) of the Customs Act, 1962** - "*Prohibited Goods*" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

**Section 2(39) of the Customs Act, 1962** - "*Smuggling*", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113.

**15.9.** Further, in terms of provisions under Section 123 of the Customs Act, 1962, it is the responsibility of the person who is in possession of the said gold / silver or the person claiming ownership of the same, to prove that the same were not smuggled gold. Relevant provisions of Section 123 of the Customs Act, 1962 are as under:

**Section 123: Burden of proof in certain cases. -**

- (1) Where any goods to which this section applies are seized under this act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be -
  - (a) In a case where such seizure is made from the possession of any person, -
    - (i) on the person from whose possession the goods were seized; and
    - (ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person.
  - (b) In any other case, on the person, if any, who claims to be the owner of the goods so seized.
- (2) This section shall apply to gold and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

**15.10.** Section 111 of the Customs Act, 1962 provides for the confiscation of the goods which are imported improperly.

**Section 111. Confiscation of improperly imported goods, etc. -**

*The following goods brought from a place outside India shall be liable to confiscation: -*

*(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*

*(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;*

*(m) any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;]*

**15.11.** Section 112 of the Customs Act, 1962 provides the penalty on the persons for the improper import of the goods.

***Section 112. Penalty for improper importation of goods, etc. -***

*Any person, -*

*(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*

*(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,*

**15.12.** Section 119: Confiscation of goods used for concealing smuggled goods :

*“Any goods used for concealing smuggled goods shall also be liable to confiscation”.*

**15.13.** From all the above paras, it appears that during the period relevant to this case, import of gold in any form (gold having purity above 22 carat) was restricted as per DGFT Notification and import was permitted only by nominated agencies. It clearly appears that import of goods whereof is allowed subject to certain conditions are to be treated as prohibited goods under Section 2(33) of the Customs Act, 1962 in case such conditions are not fulfilled. Gold is not allowed to be imported freely in baggage and it is permitted to be imported subject to fulfilment of certain conditions.

**16 VIOLATIONS & CONTRAVENTION OF VARIOUS PROVISIONS:**

**16.1.** The seized goods, 05 gold bars having purity of 999.0/24 Carat, totally weighing of 5662.380 grams & having a market value of Rs.3,67,14,872/-have been attempted to be illegally smuggled into India without declaring before the custom authority in violation of the provisions of the Customs Act, 1962 & FTP and Custom Baggage Rules. The said gold

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bars do not also appear to be allowed to be imported by Shri Kaushikkumar Mahipatlal Patel, Shri Anil Babulal Soni, Shri Rakesh D. soni and Smt. Dimpalben R. Soni W/o Shri Rakesh D. Soni keeping the restrictions on such import under the provisions of FTP and Customs Act, 1962. Hence, it appears that the said 05 gold bars were brought into India with a motive to smuggle into India by way of fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act 1962 and other allied Acts, Rules and Regulations. Therefore, the same may be treated as imported illegally into India and liable for confiscation under the provisions of Section 111(d), (l) & (m) of the Customs Act, 1962.

**16.2.** Moreover, four garments having assessable value NIL have been used for concealment of illegally imported the above 05 gold bars, for which the said four garments, having assessable value NIL are also liable for confiscation under Section 119 of the Customs Act, 1962.

**17. ROLE OF PERSONS IN THE ABOVE SMUGGLING OF GOLD:**

**17.1. Role of Shri Ketan/Chetan@Bangkok:**

**17.1.1.** On carefully going through the evidences available on record in the form of statements of Shri Kaushikkumar Mahipatlal Patel, Shri Anil Babulal Soni, Shri Rakesh D. soni and Smt. Dimpalben R. Soni W/o Shri Rakesh D. Soni recorded under Section 108 of the Customs Act, 1962 etc., it appears that Shri Ketan/Chetan@Bangkok was the mastermind to smuggle the said 05 gold bars into India through SVPI Airport, Ahmedabad from Bangkok. He in connivance with Shri Vijay K. Rajput and Shri Bharatbhai had recruited above said passengers and assigned the said work to execute such smuggling activites from Bangkok to India offering them commissions and flight tickets, lodging and foooding as well. Shri Ketan/Chetan@Bangkok was also regulating the process of handing over of gold in paste form/semi solid form to all the above passengers, (05 gold bars extracted from such semi-solid/paste form), which were attempted to be smuggled by way of instructing by Shri Vijay K. Rajput alias name as Shri Bahadurbhai or Shri Bharatbhai. Shri Ketan/Chetan@Bangkok had handed over the said 05 gold bars to Shri Kaushikkumar Mahipatlal Patel, Shri Anil Babulal Soni, Shri Rakesh D. soni and Smt. Dimpalben R. Soni for undertaking such smuggling activities. However, whereabouts of Shri Ketan/Chetan@Bangkok was not found. Thus, he has not joined with the investigation and he has not come

forward to prove his innocence in the smuggling of gold by above said persons. He in connivance with Shri Vijay K. Rajput alias name as Shri Bahadurbhai and Shri Bharatbhai recruited/managed Shri Kaushikkumar Mahipatlal Patel, Shri Anil Babulal Soni, Shri Rakesh D. soni and Smt. Dimpalben R. Soni W/o Shri Rakesh D. Soni as the carriers of such attempted smuggled gold items against the commission/monitory consideration. They provided the ticket for travel and monetary considerations to the above said persons. Thus, he appears to be the mastermind in this entire smuggling racket of the above 05 gold bars.

**17.1.2.** Therefore, Shri Ketan/Chetan@Bangkok has concerned himself in the act of smuggling of foreign origin 05 gold bars and has knowingly violated the various provisions of Foreign Trade Policy 2015-20, Baggage Rules, 2016, Customs Notifications, etc., which rendered the above goods liable to confiscation under Section 111(d), (1) and (m) of the Customs Act, 1962 and rendered himself liable for penalty under Section 112 (a) & (b) and Section 117 of Customs Act, 1962.

**17.2.** Role of Shri Kaushikkumar Mahipatlal Patel:

**17.2.1.** From evidences gathered, both oral and documentary, available on records, clearly establish the role of Shri Kaushikkumar Mahipatlal Patel, resident of B-15, Devbhumi Apartment, Nr. Kashiba School, Behind Ajay Tenament-5, Vastral, Ahmedabad-382415, Gujarat, who has indulged himself in act of smuggling of 2 gold bars (extracted from semi-solid/paste form), totally weighing 1413.390 grams having purity of 999.0 (24 Kt), total market value of Rs.91,64,421/- out of totally smuggled by them in jointly as 5662.380 grams, having market value of Rs.3,67,14,872/- from Bangkok to India through SVPI, Airport Ahmedabad. He came from Bangkok to India with an intention to smuggle of the above 02 gold bars into India belonging to others for monetary considerations and for personal enrichment in connivance with the kingpins of smuggling racket viz Shri Ketan/Chetan@Bangkok and with Shri Vijay K. Rajput alias name as Shri Bahadurbhai. He appears to be important part of the syndicate of such smuggling of 02 gold bars out of 05 gold bars smuggled by them.

**17.2.2.** The act of concealing the gold items and not declaring before the custom authority itself appears and suggests the mens-reo on the part of Shri Kaushikkumar M. Patel with a view to avoiding payment

of Customs duty. It therefore, appears that Shri Kaushikkumar Mahipatlal Patel, was not inclined to declare the goods viz. gold items that he was carrying before the Customs Authorities. Thus, 02 gold bars out of 05 gold bars attempted to smuggled by them, weighing 1413.39 grams, purity of 999.0 24 Kt, having a market value of Rs.91,64,421/- was recovered from the possession of Shri Kaushikkumar M. Patel, which was illegally attempted to be smuggled by him into India without declaration and payment of appropriate Customs duties.

**17.2.3.** Therefore, Shri Kaushikkumar M. Patel has concerned himself in the act of smuggling of foreign origin 02 gold bars out of 05 gold bars attempted to smuggled by them and has knowingly violated the various provisions of Foreign Trade Policy 2015-20, Baggage Rules, 2016, Customs Notifications, etc., which rendered the above goods liable to confiscation under Section 111(d), (1) and (m) of the Customs Act, 1962 and rendered himself liable for penalty under Section 112 (a) & (b) and Section 117 of Customs Act, 1962.

**17.3.** Role of Shri Anil Babulal Soni:

**17.3.1.** From evidences gathered, both oral and documentary, available on records, clearly establish the role of Shri Anil B. Soni, resident of 2000, Vinobabhav Nagar, Vinzol, Ahmedabad-382445, Gujarat, who has indulged himself in act of smuggling of 1 gold bar (extracted from semi-solid/paste form), totally weighing 1401.06 grams having purity of 999.0 (24 Kt), total market value of Rs.90,84,473/- out of totally smuggled by them in jointly as 5662.380 grams, having market value of Rs.3,67,14,872/- from Bangkok to India through SVPI, Airport Ahmedabad. He came from Bangkok to India with an intention to smuggle of the above 1 gold bar into India belonging to others for monetary considerations and for personal enrichment in connivance with the kingpins of smuggling racket viz Shri Ketan/Chetan@Bangkok and with Shri Vijay K. Rajput alias name as Shri Bahadurbhai. He appears to be important part of the syndicate of such smuggling of 1 gold bar out of 05 gold bars smuggled by them.

**17.3.2.** The act of concealing the gold items and not declaring before the custom authority itself appears and suggests the mens-reas on the part of Shri Anil B. Soni with a view to avoiding payment of Customs duty. It therefore, appears that Shri Anil B. Soni, was not inclined to

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declare the goods viz. gold items that he was carrying before the Customs Authorities. Thus, 01 gold bar out of 05 gold bars attempted to smuggled by them, weighing 1401.06 grams, purity of 999.0 24 Kt, having a market value of Rs.90,84,473/- was recovered from the possession of Shri Anil B. Soni, which was illegally attempted to be smuggled by him into India without declaration and payment of appropriate Customs duties.

**17.2.3.** Therefore, Shri Anil B. Soni has concerned himself in the act of smuggling of foreign origin 01 gold bar out of 05 gold bars attempted to smuggled by them and has knowingly violated the various provisions of Foreign Trade Policy 2015-20, Baggage Rules, 2016, Customs Notifications, etc., which rendered the above goods liable to confiscation under Section 111(d), (1) and (m) of the Customs Act, 1962 and rendered himself liable for penalty under Section 112 (a) & (b) and Section 117 of Customs Act, 1962.

**17.4.** Role of Shri Rakeshkumar D. Soni:

**17.4.1.** From evidences gathered, both oral and documentary, available on records, clearly establish the role of Shri Rakeshkumar D. Soni, resident of 1-20-77, Tarbhoda No Pado, Ghivato, Patan, Gujarat-384265 who has indulged himself in act of smuggling of 1 gold bar (extracted from semi-solid/paste form), totally weighing 1529.330 grams having purity of 999.0 (24 Kt), total market value of Rs.99,16,176/- out of totally smuggled by them in jointly as 5662.380 grams, having market value of Rs.3,67,14,872/- from Bangkok to India through SVPI, Airport Ahmedabad. He came from Bangkok to India with an intention to smuggle of the above 1 gold bar into India belonging to others for monetary considerations and for personal enrichment in connivance with the kingpins of smuggling racket viz Shri Ketan/Chetan@Bangkok and with Shri Bharatbhai. He appears to be important part of the syndicate of such smuggling of 1 gold bar out of 05 gold bars smuggled by them.

**17.4.2.** The act of concealing the gold items and not declaring before the custom authority itself appears and suggests the mens-rea on the part of Shri Rakeshkumar D. Soni with a view to avoiding payment of Customs duty. It therefore, appears that Shri Rakeshkumar D. Soni, was not inclined to declare the goods viz. gold items that he was carrying before the Customs Authorities. Thus, 01 gold bar out of 05 gold bars attempted to smuggled by them, weighing 1529.330 grams, purity of 999.0

24 Kt, having a market value of Rs.99,16,175/- was recovered from the possession of Shri Rakeshkumar D. Soni, which was illegally attempted to be smuggled by him into India without declaration and payment of appropriate Customs duties.

**17.4.3.** Therefore, Shri Rakeshkumar D. Soni has concerned himself in the act of smuggling of foreign origin 01 gold bar out of 05 gold bars attempted to smuggled by them in jointly and has knowingly violated the various provisions of Foreign Trade Policy 2015-20, Baggage Rules, 2016, Customs Notifications, etc., which rendered the above goods liable to confiscation under Section 111(d), (1) and (m) of the Customs Act, 1962 and rendered himself liable for penalty under Section 112 (a) & (b) and Section 117 of Customs Act, 1962.

**17.5.** Role of Smt. Dimpalben Rakeshkumar Soni W/o Shri Rakeshkumar D. Soni:

**17.5.1.** From evidences gathered, both oral and documentary, available on records, clearly establish the role of Smt. Dimpalben Rakeshkumar Soni, resident of 1-20-77, Tarbhoda No Pado, Ghivato, Patan, Gujarat-384265 who has indulged herself in act of smuggling of 1 gold bar (extracted from semi-solid/paste form), totally weighing 1318.60 grams having purity of 999.0 (24 Kt), total market value of Rs.85,49,802/- out of totally smuggled by them in jointly as 5662.380 grams, having market value of Rs.3,67,14,872/- from Bangkok to India through SVPI, Airport Ahmedabad. She came from Bangkok to India with an intention to smuggle of the above 01 gold bar into India belonging to others for monetary considerations and for personal enrichment in connivance with the kingpins of smuggling racket viz Shri Ketan/Chetan@Bangkok and with Shri Bharatbhai. She appears to be important part of the syndicate of such smuggling of 1 gold bar out of 05 gold bars smuggled by them.

**17.5.2.** The act of concealing the gold items and not declaring before the custom authority itself appears and suggests the mens-rea on the part of Smt. Dimpalben Rakeshkumar Soni with a view to avoiding payment of Customs duty. It therefore, appears that Smt. Dimpalben Rakeshkumar Soni, was not inclined to declare the goods viz. gold items that she was carrying before the Customs Authorities. Thus, 01 gold bar out of 05 gold bars attempted to smuggled by them, weighing 1318.60 grams, purity of 999.0 24 Kt, having a market value of Rs.85,49,802/- was recovered from the possession of Smt. Dimpalben Rakeshkumar Soni,

which was illegally attempted to be smuggled by him into India without declaration and payment of appropriate Customs duties.

**17.5.3.** Therefore, Smt. Dimpalben Rakeshkumar Soni has concerned herself in the act of smuggling of foreign origin 01 gold bar out of 05 gold bars attempted to smuggled by them in jointly and has knowingly violated the various provisions of Foreign Trade Policy 2015-20, Baggage Rules, 2016, Customs Notifications, etc., which rendered the above goods liable to confiscation under Section 111(d), (1) and (m) of the Customs Act, 1962 and rendered himself liable for penalty under Section 112 (a) & (b) and Section 117 of Customs Act, 1962.

**17.6.** Role of Shri Vijay K. Rajput alias name as Shri Bahadurbhai:-

**17.6.1.** From evidences gathered, both oral and documentary, available on records, clearly establish the role of Shri Vijay K. Rajput, resident of 19/411, Shivanand Nagar, Amraiwadi, Ahmedabad-380026, Gujarat has involved himself in act of smuggling of 05 gold bars (extracted from semi-solid/paste form, totally weighing 5662.380 having purity of 999.0 (24 Kt), total market value of Rs.3,67,14,872/- from Bangkok to India through SVPI, Airport Ahmedabad as he in nexus with Shri Chetan/Ketan@Bangkok has recruited to Shri Kaushikkumar M. Patel and Shri Anil B. Soni and provided all the facilitation for smuggling of such gold into India from Bangkok through SVPI Airport Ahmedabad. From the digital forensic evidence as well as the statements of Shri Kaushikkumar M. Patel and Shri Anil B. Patel recorded, it evidently appears that Shri Vijay K. Rajput had provided flight tickets and made them contact with Shri Ketan/Chetan@Bangkok. Despite issuance of several summons by this office, Shri Vijay K. Rajput did not join the investigation, which proves his act of non co-operation to the department. He had managed and played an important role in smuggling of such gold into India through SVPI Airport, Ahmedabad.

**17.6.2.** Therefore, Shri Vijay K. Rajput has concerned himself in the act of smuggling of 05 bars (extracted from semi-solid/paste form) and has knowingly violated the various provisions of Foreign Trade Policy 2015-20, Baggage Rules, 2016, Customs Notifications, etc., which rendered the above goods liable to confiscation under Section 111(d), (1) and (m) of the Customs Act, 1962 and rendered himself liable for penalty under Section 112 (a) & (b) and Section 117 of Customs Act, 1962.

**17.7. Role of Shri Bharatbhai:-**

**17.7.1.** From evidences gathered, both oral and documentary, available on records, clearly establish the role of Shri Bharatbhai has involved himself in act of smuggling of 05 gold bars (extracted from semi-solid/paste form, totally weighing 5662.380 having purity of 999.0 (24 Kt), total market value of Rs.3,67,14,872/- from Bangkok to India through SVPI, Airport Ahmedabad as he in nexus with Shri Chetan/Ketan@Bangkok has recruited to Shri Rakeshkumar D. Soni and Smt. Dimpalben R. Soni and provided all the facilitation for smuggling of gold into India from Bangkok through SVPI Airport Ahmedabad. From the digital forensic evidence as well as the statements of Shri Rakeshkumar D. Soni and Smt. Dimpalben R. Soni recorded, it evidently appears that Shri Bharatbhai in connivance with Shri Ketan/Chetan@Bangkok had managed and played an important role in smuggling of Gold into India through SVPI Airport, Ahmedabad. Since, no whereabouts in respect of Shri Bharatbhai was found. Hence, he did not join the investigation.

**17.7.2.** Therefore, Shri Bharatbhai has concerned himself in the act of smuggling of foreign origin 05 bars (extracted from semi-solid/paste form) and has knowingly violated the various provisions of Foreign Trade Policy 2015-20, Baggage Rules, 2016, Customs Notifications, etc., which rendered the above goods liable to confiscation under Section 111(d), (1) and (m) of the Customs Act, 1962 and rendered himself liable for penalty under Section 112 (a) & (b) and Section 117 of Customs Act, 1962.

**18.** Accordingly, a Show Cause Notice was issued to **(i)** Shri Kaushikkumar Mahipatlal Patel, resident of B-15, Devbhumi Apartment, Nr. Kashiba School, Behind Ajay Tenament-5, Vastral, Ahmedabad-382415, Gujarat, **(ii)** Shri Anil B. Soni, resident of 2000, Vinobabhav Nagar, Vinzol, Ahmedabad-382445, Gujarat, **(iii)** Shri Rakeshkumar D. Soni, resident of 1-20-77, Tarbhoda No Pado, Ghivato, Patan, Gujarat-384265, **(iv)** Smt. Dimpalben Rakeshkumar Soni, resident of 1-20-77, Tarbhoda No Pado, Ghivato, Patan, Gujarat-384265, **(v)** Shri Ketan/Chetan@Bangkok, **(vi)** Shri Vijay K. Rajput alias name as Shri Bahadurbhai, resident of 19/411, Shivanand Nagar, Amraiwadi, Ahmedabad-380026 and **(vii)** Shri Bharatbhai as to why:-

- i. 05 gold bars (extracted from semi-solid/paste form) totally weighing 5662.380 grams having purity of 999.0/24 Kt and

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market value of Rs.3,67,14,872/- recovered seized under Section 110 of the Customs Act, 1962 should not be confiscated under Section 111 (d), (l) and (m) of the Customs Act, 1962.

- ii. 4 garments cloth, which were used for the concealment of the above 05 gold bars (extracted from semi-sold/paste form) having Nil value seized under Section 110 of the Customs Act, 1962 should not be confiscated under Section 119 of the Customs Act, 1962.
- iii. Penalties should not be imposed upon them under Section 112(a) and (b) of the Customs Act, 1962.
- iv. Penalty should not be imposed upon them under Section 117 of the Customs Act, 1962.

#### **19. Defense reply and record of personal hearing:**

**19.1 Defense Reply of Noticee No. 1** i.e Shri Kaushikkumar Mahipatlal Patel, resident of B-15, Devbhumi Apartment, Nr. Kashiba School, Behind Ajay Tenament-5, Vastral, Ahmedabad-382415, Gujarat - The noticee has not submitted any written defense reply against the allegation made against him in SCN.

**19.2 Defense Reply of Noticee No. 2** i.e Shri Anil B. Soni, resident of 2000, Vinobabhavnenagar, Vinzol, Ahmedabad-382445, Gujarat:- The noticee has not submitted any written defense reply against the allegation made against her in SCN.

**10.3 Defense Reply of Noticee No. 3** i.e Shri Rakeshkumar D. Soni, resident of 1-20-77, Tarbhoda No Pado, Ghivato, Patan, Gujarat-384265 :- The noticee has not submitted any defense reply against the allegation made against her in SCN.

**10.4 Defense Reply of Noticee No. 4** i.e Smt. Dimpalben Rakeshkumar Soni, resident of 1-20-77, Tarbhoda No Pado, Ghivato, Patan, Gujarat-384265:- The noticee has not submitted any defense reply.

**10.5 Defense Reply of Noticee No. 5** i.e Shri Ketan/Chetan@Bangkok:- The noticee has not submitted any defense reply.

**10.6 Defense Reply of Noticee No. 6** i.e Shri Vijay K. Rajput alias name as Shri Bahadurbhai, resident of 19/411, Shivanand Nagar, Amraiwadi, Ahmedabad-380026:- The noticee has not submitted any defense reply.

**10.7 Defense Reply of Noticee No. 7** i.e Shri Bharatbhai:- The noticee has not submitted any defense reply.

**Personal Hearing: -**

**20.** Adequate opportunities of personal hearing were given to all noticees in the Show Cause, which is summarized as under: -

**Noticee No. 1: i.e Shri Kaushikkumar Mahipatla Patel, resident of B-15, Devbhumi Apartment, Nr. Kashiba School, Behind Ajay Tenament-5, Vastral, Ahmedabad-382415, Gujarat**

The noticee was given opportunity for personal hearing on 24.02.2025, 11.03.2025 & 21.03.2025 and letters dispatched on the given address through speed post. This office has not received the letters back undelivered from the post which implies the same were delivered to the noticee, but he failed to appear and represent his case. In the instant case, the noticee has been granted sufficient opportunity of being heard in person for three times but he failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and he do not have anything to say in his defense.

**Noticee No. 2: Shri Anil B. Soni, resident of 2000, Vinobabhave Nagar, Vinzol, Ahmedabad-382445, Gujarat:** The noticee was given opportunity for personal hearing on 24.02.2025, 11.03.2025 & 21.03.2025 and letters dispatched on the given address through speed post. This office has not received the letters back undelivered from the post which implies the same were delivered to the noticee, but he failed to appear and represent his case. In the instant case, the noticee has been granted sufficient opportunity of being heard in person for three times but he failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and he do not have anything to say in his defense.

**Noticee No. 3: Shri Rakeshkumar D. Soni, resident of 1-20-77, Tarbhoda No Pado, Ghivato, Patan, Gujarat-384265:**

The noticee was given opportunity for personal hearing on 24.02.2025, 11.03.2025. The Noticee himself appeared for personal hearing on 11.03.2025 and requested to attend the PH in person, instead through video conferencing. He submitted that he alongwith his wife went to Bangkok for a trip. He submitted that a person named Shri Bharatbhai has told him that he will bear all the expenses of their Bangkok trip and also gave Rs.15,000/- over and above, but in return he has to bring gold from Bangkok for Bharatbhai. While returning from Bangkok, Shri Chetan Chaudhary gave him gold in form of paste which he hides in his

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underwear. He submitted that the gold was neither belong to him nor purchased by him but the same was given to him by Shri Chetan Chaudhary and asked him to handover the same to Bharatbhai at Ahmedabad. He submitted that he has no purchase bill/invoice of said gold with him and also no bank details / payment details. He submitted that he has nothing to add more and this was his final submission.

**Noticee No. 4: Smt. Dimpalben Rakeshkumar Soni, resident of 1-20-77, Tarbhoda No Pado, Ghivato, Patan, Gujarat-384265:**

The noticee was given opportunity for personal hearing on 24.02.2025, 11.03.2025. The Noticee herself alongwith her husband Shri Rakeshkumar Soni appeared for personal hearing on 11.03.2025 and requested to attend the PH in person, instead through video conferencing. She submitted that he alongwith her husband went to Bangkok for a trip. She submitted that her husband told her that they will visit Bangkok without any expenses and will also receive Rs. 15,000/- over and above, but in return she has to bring gold from Bangkok for Bharatbhai. While returning from Bangkok, Shri Chetan Chaudhary gave her gold in form of paste which she hides in her underwear. She submitted that the gold was neither belong to her nor purchased by her but the same was given to her by Shri Chetan Chaudhary and asked her to hand over the same to Bharatbhai at Ahmedabad. She submitted that she has no purchase bill/invoice of said gold with her and also no bank details / payment details. She submitted that she has nothing to add more and this was her final submission.

**Noticee No. 5: Shri Ketan/Chetan@Bangkok:**

The noticee was given opportunity for personal hearing on 24.02.2025, 11.03.2025 & 21.03.2025. The letter for intimation for personal hearing were served to the noticee by affixing the same on notice board in terms of Section 153 of Customs Act, 1962, but he failed to appear and represent his case. In the instant case, the noticee has been granted sufficient opportunity of being heard in person for three times but he failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and he do not have anything to say in his defense.

**Noticee No. 6: Shri Vijay K. Rajput alias name as Shri Bahadurbhai, resident of 19/411, Shivanand Nagar, Amraiwadi, Ahmedabad-380026:**

The noticee was given opportunity for personal hearing on 24.02.2025, 11.03.2025 & 21.03.2025 and letters dispatched on the given address through speed post. This office has not received the letters back undelivered from the post which implies the same were delivered to the noticee, but he failed to appear and represent his case. In the instant case, the noticee has been granted sufficient opportunity of being heard in person for three times but he failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and he do not have anything to say in his defense.

**Noticee No. 7: Shri Bharatbhai:**

The noticee was given opportunity for personal hearing on 24.02.2025, 11.03.2025 & 21.03.2025. The letter for intimation for personal hearing were served to the noticee by affixing the same on notice board in terms of Section 153 of Customs Act, 1962, but he failed to appear and represent his case. In the instant case, the noticee has been granted sufficient opportunity of being heard in person for three times but he failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and he do not have anything to say in his defense.

**Discussion and Findings:**

**21.** I have carefully gone through the case records, Show Cause Notice, relied upon documents to Show Cause Notice and Statements of the Noticees alongwith any submission made by the noticees at the time of personal hearing scheduled on various dates. Further, sufficient opportunities to be heard were extended to all the noticees of the SCN following the Principles of Natural Justice.

**21.1.** Before discussing the allegations levelled in the impugned SCN in light of submissions made by some of the noticees during the PH, it is imperative to mention that none of them have retracted from their voluntarily statements tendered by them before DRI officers under Section 108 of Customs Act, 1962. I find that the said noticees have admitted in their respective statements that they have given statements voluntarily

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and without any inducement, threat and coercion or by any improper means. I find that the statements recorded under Section 108 of the Customs Act, 1962 have evidentiary value under the provisions of law. The Judgment relied upon in this matter as follows:-

- (i) Hon'ble Supreme Court in case of Surjeet Singh Chhabra Vs. U.O.I [reported in 1997 (89) E.L.T 646 (S.C)] held that evidence-confession statement made before Customs officer, though retracted within six days, in admission and binding, since Customs Officers are not police officers under Section 108 of the Customs Act and FERA.
- (ii) Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro India Ltd reported in 2000 (120) E.L.T 280 (SC) wherein it was held that "Statement recorded by a Customs Officer under Section 108 is valid evidence"
- (iii) In 1996 (83) E.L.T 258 (SC) in case of Shri Naresh J Sukhwani V. Union of India wherein it was held that " It must be remembered that the statement before the Customs official is not a statement recorded under Section 161 of the Criminal Procedure Code 1973. Therefore, it is material piece of evidence collected by Customs Official under Section 108 of the Customs Act,1962"
- (iv) There is no law which forbids acceptance of voluntary and true admissible statement if the same is later retracted on bald assertion of threat and coercion as held by Hon'ble Supreme Court in case of K.I Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin (1997) 3 SSC 721.
- (v) Hon'ble High Court of Mumbai in FERA Appeal No. 44 of 2007 in case of Kantilal M Jhala Vs. Union of India, held that "Confessional Statement corroborated by the Seized documents admissible even if retracted."
- (vi) The Hon'ble Supreme Court in another case of Gulam Hussain Shaik Chougule Vs. S.Reynolds, Supdt of Customs, Marmgoa reported in 2001 (134) ELT 3 (SC) categorially held that "Statement recorded by the Customs officer under Section 108 of the Customs Act, is admissible in evidence. The Court has to test whether the inculpating portions were made voluntarily or whether it is vitiated on account of any of premises envisaged in Section 24 of the Evidence Act....."

(vii) The Hon'ble Apex Court in the case of Badaku Joti Svant Vs. State of Mysore reported at 1978 (2) ELT J 323 (SC) held as "In this view of the matter the statement made by the appellant to the Deputy Superintendent of Customs and Excise would not be hit by Section 25 of the Evidence Act and would be admissible in evidence unless the appellant can take advantage of Section 24 of the Evidence Act. As to that it was urged on behalf of the appellant in the High Court that the confessional statement was obtained by threats. This was not accepted by the High Court and therefore, Section 24 of the Evidence Act has no application in the present case. it is not disputed that if this statement is admissible, the conviction of the appellant is correct. As we have held that a Central Excise Officer is not a Police officer within the meaning of those words in Section 25 of the Evidence Act, the appellant's statement is admissible. It is not ruled out by anything in Section 24 of the Evidence Act and so the appellant's conviction is correct and the appeal must be dismissed. "

**22.** I perused the facts presented before me. The question that needs to be addressed in the instant case are within the jurisdiction of Customs Act, 1962 and allied laws as under: -

- i. Whether the goods seized are falls under "prohibited goods" as defined under Section 2(33) of the Customs Act, 1962;
- ii. Whether, seized Gold bars total weighing 5662.380 Grams extracted from the gold paste found concealed in under-garments/clothes having a market value of Rs.3,67,14,872/- recovered from the possession of Shri Kaushikkumar Mahipatlal Patel ( herein after mentioned as Noticee No. 1), Shri Anil B. Soni (Noticee No. 2), Shri Rakeshkumar D. Soni (Noticee No. 3) and Smt. Dimpalben Rakeshkumar Soni (Noticee No. 4) is liable for confiscation under Section 111 (d), (l) and (m) of the Customs Act, 1962.
- iii. Whether, 4 garments cloth, which were used for the concealment of the above 05 gold bars (extracted from semi-sold/paste form) having Nil value seized under Section 110 of the Customs Act, 1962 is liable for

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confiscation under Section 119 of the Customs Act, 1962.

**iv.** Whether the act of the Noticee No. 1 to Noticee No. 7 renders them to be penalized discretionarily under Section 112 & Section 117 of the Customs Act, 1962;

**23.** With respect to the prohibition of the goods, it is to submit that the Hon'ble Apex Court in case of M/s. Om Prakash Bhatia Vs. Commissioner of Customs Observed the following:-

"Further, Section 2(33) of the Act defines "Prohibited Goods" as under:- Prohibited goods means any goods import or export of which subject to any prohibition under this Act or any other law for time being in force but does not include any such goods in respect of which conditions subject to which the goods are to be permitted to be imported or exported have been complied with. "From the aforesaid definition, it can be stated that (a) if there is any prohibition of import or export of goods under the Act or any other law for time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of the goods are not complied with, it would be considered to be prohibited goods. This would also be clear from the Section 11 of Customs Act, 1962 which empowers the Central Government to prohibit either 'absolutely' or 'subject to such conditions' to be fulfilled before or after clearance, as may be specified in the Notification, the import or export of the goods of any specified description. The notification can be issued for the purpose specified in sub section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before/after clearance of goods. If the conditions are not fulfilled, it may amount to prohibited goods. This is also made clear by this court in Sheikh Mohd. Omer vs. Collector of Customs, Calcutta and others [(1970) 2 SSC 728] wherein it was contended that the expression 'prohibited' used in Section 111 (d) of the Customs Act, 1962 must be considered as a total prohibition and the expression does not be within its fold the restriction imposed in clause (3) of import control order, 1955. The Court negatived the said contention and held thus:- "... what clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to" any prohibition imposed by any law for the time

being in force in this country is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression "any prohibition" in section 111(d) of the Customs Act, 1962 includes restriction. Merely because section 3 of import or export (control) act, 1947 uses three different expressions 'prohibiting', 'restricting' or 'otherwise controlling', we cannot cut down the amplitude of the word "any prohibition" in Section 111(d) of Customs Act, 1962. "Any prohibition" means every prohibition. In others words, all types of prohibition. Restriction is one type of prohibition. Hence, in the instant case, Gold brought was under restriction/prohibition. **Relying on the ratio of the judgment stated above, I find that the goods brought by the Noticee No. 1 to Noticee No. 4 named as (i) Shri Kaushikkumar Mahipatlal Patel, (ii) Shri Anil B. Soni, (iii) Shri Rakeshkumar D. Soni, (iv) Smt. Dimpalben Rakeshkumar Soni respectively, are "Prohibited Goods" under the definition of Section 2(33) of the Customs Act, 1962.**

**24.** I will now examine the case as per the documents available in the file and submission made by the some noticees at the time of personal hearing, one by one as per the relevant law and as per the provisions: -

**24.1** I find that based on intelligence, officers of Directorate of Revenue Intelligence, Ahmedabad Zonal Unit (herein after referred as 'DRI') alongwith the officers of AIU, SVPIA, Ahmedabad had intercepted four passengers namely (i) Shri Kaushikkumar Mahipatlal Patel, Male, (ii) Shri Rakeshkumar Dineshkumar Soni, Male (iii) Shri Anil Babulal Soni, Male and (iv) Smt. Dimpalben Rakeshkumar Soni, Female who were arriving by Thai Flight No. TG 343 on 30.01.2024 from Bangkok to Ahmedabad one by one by verifying their passport, who were trying to exit through green channel without making any declaration and all proceeding were recorded under Panchnama proceeding dated 30/31.01.2024. The DRI & Custom officers asked the passengers (i) Shri Kaushikkumar Mahipatlal Patel (ii) Shri Rakeshkumar Dineshkumar Soni (iii) Shri Anil Babulal Soni and (iv) Smt. Dimpalben Rakeshkumar Soni one by one to pass through the Door Frame Metal Detector (DFMD) machine installed near the green channel in the Arrival Hall of Terminal 2 building, after removing all metallic objects from their body / clothes. However, no beep sound was heard indicating that there was no metallic substance on the body/clothes of (i) Shri

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Kaushikkumar Mahipatlal Patel (ii) Shri Rakeshkumar Dineshkumar Soni (iii) Shri Anil Babulal Soni and (iv) Smt. Dimpalben Rakeshkumar Soni. On examination of baggage images displayed from the Baggage Screening Machine for all the baggages (check-in and cabin), the DRI & Custom officers did not notice any unusual images indicating anything objectionable present in any of the bags of (i) Shri Kaushikkumar Mahipatlal Patel (ii) Shri Rakeshkumar Dineshkumar Soni (iii) Shri Anil Babulal Soni and (iv) Smt. Dimpalben Rakeshkumar Soni. Upon examination and their personal search of the all the passenger by DRI officers/AIU officers and female lady officers, 4 strips and 1 packet recovered from the personal search of Shri Kaushikkumar Mahipatlal Patel, 4 strips and 1 packet recovered from the personal search of Shri Rakeshkumar Dineshkumar Soni, 4 strips and 1 packet recovered from the personal search of Shri Anil Babulal Soni and 4 strips and 1 packet recovered from the personal search of Smt. Dimpalben Rakeshkumar Soni which contains the gold in paste form.

It is on the record that the gross weight of the gold paste recovered from all 04 noticees was 6559.21 grams and upon extraction of the same by the Govt. Approved Valuer the Net weight of Gold bars formed from the said gold paste comes to 5662.380 grams with 999.0/24kt purity and having market value of Rs.3,67,14,872/-. It is uncontested fact that the gold in form of paste was not declared to the Customs Under Section 77 of the Customs Act, 1962 and all 04 noticees were trying to pass through green channel. As per the facts of case available on record and as discussed above, no such declaration of the impugned gold namely gold paste, which were found concealed and recovered in manner as described above, was made by (i) Shri Kaushikkumar Mahipatlal Patel (ii) Shri Rakeshkumar Dineshkumar Soni (iii) Shri Anil Babulal Soni and (iv) Smt. Dimpalben Rakeshkumar Soni in prescribed declaration form. The noticees were not eligible to import gold and that too undeclared in substantial quantity and hence the same cannot be treated as "bonafide baggage" in terms of section 79 of the Customs Act, 1962 and the same appropriately constitute prohibited goods which are liable to confiscation under Section 111 of the Customs Act, 1962.

**25. Now, I discuss the matter whether the gold recovered from all 04 noticees is liable for confiscation or otherwise under Section 111 of Customs Act, 1962 and whether the noticees are liable for penalty**

**under Section 112 of Customs Act, 1962 and Section 117 of Customs Act, 1962 or not.**

**25.1 I find that the panchnama dated 30/31.01.2024 clearly draws out the fact that the** Noticee No. 1 i.e Shri Kaushikkumar Mahipatlal Patel, who arrived from Bangkok vide flight no. TG-343, was intercepted by DRI officers and AIU officers on the basis of intelligence and during the personal search, gold paste in form of 4 strips and 01 packet having gross weight of 1626.57 grams were recovered from jeans and underwear worn by the noticee. It is also on the record that the Govt approved valuer vide his valuation report having No. 1276/2023-24, certified that the 02 gold bars had been extracted from said gold paste were of purity of 999.0/24Kt having Net weight 1413.39 grams and having Market value of Rs. 91,64,421/- . It is uncontested fact that the gold in form of paste was not declared to the Customs Under Section 77 of the Customs Act, 1962 and the noticee passed through green channel. As per the facts of case available on record and as discussed above, no such declaration of the impugned gold namely Gold bars (derived from paste), which were found concealed and recovered in manner as described above, was made by the noticee namely Shri Kaushikkumar Mahipatlal Patel in prescribed declaration form. I find that the noticee was not eligible to import gold and that too undeclared in substantial quantity and hence the same cannot be treated as “bonafide baggage” in terms of section 79 of the Customs Act, 1962 and the same appropriately constitute prohibited goods which are liable to confiscation under Section 111 of the Customs Act, 1962.

**25.2 I also find that the noticee had neither questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in the panchnama during the course of recording of his statement and any later stage of the proceedings. Every procedure conducted during the panchnama by the Officers, was well documented and made in the presence of the panchas as well as the noticee. In fact, in his statement dated 31.01.2024 & 01.02.2024, he has clearly admitted that he had travelled from Bangkok to Ahmedabad by Flight No. TG343 dated 30/31.01.2024 carrying gold in form of paste and concealed the same in his clothes; that he had intentionally not declared the substance containing foreign origin gold before the Customs authorities as he wanted to clear the same illicitly and evade payment of customs duty; that he was**

aware that smuggling of gold without payment of customs duty is an offence under the Customs law and thereby, violated provisions of Customs Act and the Baggage Rules, 2016. In his statement, he submitted that the gold was not purchased by him and was given by some unknown person introduced by Shri Ketan at Bangkok and for successful delivery of the same, he would receive Rs. 20,000/-.

**25.3** I find that the noticee has clearly accepted that he had not declared the gold in paste form concealed in his clothes which was worn by him, to the Customs authorities. It is clear case of non-declaration with intent to smuggle the gold. Accordingly, there is sufficient evidence to conclude that the noticee had failed to declare the foreign origin gold before the Customs Authorities on his arrival at SVP International Airport, Ahmedabad. In the statement, he admitted that the gold was not purchased by him and a person known to Shri Ketan gave him the said gold in form of paste at Bangkok and for carrying the said gold to India, he would get an amount of Rs.20,000/-. I find that the noticee had gave his statement voluntarily under Section 108 of Customs Act, 1962 without any threat, coercion and recorded as per his say. Therefore, it is a case of smuggling of gold without declaring in the aforesaid manner with intent to evade payment of Customs duty is conclusively proved. Thus, it is proved that noticee violated Section 77, Section 79 of the Customs Act for import/smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993 as amended, and para 2.26 of the Foreign Trade Policy 2015-20. Further as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized.

**25.4** I find that the noticee has not came forward to claim the ownership of the seized goods and /or has submitted any documents, whatsoever in support of legal acquisition and/or importation of said gold. Section 123 of the Customs Act, 1962 stipulates: -

**Section 123. Burden of proof in certain cases. -**

1 [(1) *Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled*

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*goods, the burden of proving that they are not smuggled goods shall be -*

*(a) in a case where such seizure is made from the possession of any person, -*

*(i) on the person from whose possession the goods were seized; and  
(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;*

*(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.]*

*(2) This section shall apply to gold, 2 [and manufactures thereof], watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.*

In the instant case, the burden of proving that the seized derived gold bars are not smuggled goods lie on the person, who claims to be owner of the goods so seized or from whose possession the goods are seized. Thus, the onus, in the instant case for proving that the seized gold bars weighing 1413.39 grams of foreign origin are not smuggled in nature lie on Shri Kaushikkumar Mahipatlal Patel from whose possession the gold was recovered and seized on 31.01.2024. The test report shows that gold bars derived from gold paste were of purity of 999.0/24Kt. I find from the records that sufficient opportunity was given to be heard in person and to submit his defense reply against the allegation made under subject SCN, to the Shri Kaushikkumar Mahipatlal Patel, however the noticee did not turn up and neither file any defense reply nor avail the opportunity of personal hearing which shows his reluctant behavior and he was not bothered about the ongoing adjudication proceeding. Accordingly, I hold that the noticee has nothing to submit in his defense and the noticee Shri Kaushikkumar Mahipatlal Patel could not produce any licit or valid documents regarding their legal importation/acquisition/possession/transportation of the gold of foreign origin found in his possession. Thus, he was failed to discharge the "burden of proof that gold bars derived from the paste were legally imported/possessed and also, he had not declared the same to the customs in prescribed Indian Customs Declaration Form. Applying the ratio of judgments of the Hon'ble Supreme Court in matter of Om Prakash Bhatia Vs. Commissioner of Customs [2003(6) SSC 161] and Hon'ble High

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Court, Madras in case of Samynathan Murugesan Vs. Commissioner of Customs [2010 (254) ELT A015], I find that the said smuggled derived gold bars from gold paste weighing 1413.39 grams of foreign origin are liable to absolute confiscation under Section 111 (d), 111(l) & 111(m) of Customs Act, 1962.

Also, I find that the instant case is a clear case of smuggling in terms of Section 2(39) of the Customs Act, 1962, where 02 gold bars weighing 1413.39 grams of foreign origin were seized under Section 110 of the Customs Act, 1962 on reasonable belief that they were smuggled in to India from Bangkok. As per Sub-Section 2 of Section 123 of the Customs Act, 1962, onus for proving that the seized gold bars, having weight 1413.39 grams and valued at Rs.91,64,421/- are not of smuggled in nature, shall be on Shri Kaushikkumar Mahipatlal Patel, from whose possession the impugned goods were seized. Shri Kaushikkumar Mahipatlal Patel in his statement mentioned that the said gold in form of paste was given to him by a person who was introduced by Shri Ketan at Bangkok on the direction of Shri Bahadurbhai for smuggling the said goods in India. In his statement recorded under Section 108 of Customs Act, 1962, he admitted that he was aware that the gold paste, he was carrying, had been smuggled into India from Bangkok and he was knowingly carrying the smuggled gold from Bangkok to Ahmedabad for monetary benefits. It shows that knowingly and consciously he was involved in carrying and handling the foreign origin gold which he has reasons to believe or know, was liable for confiscation under Section 111 of said Act and intentionally not made any declaration in Customs Declaration Form, which is required as per Section 77 of Customs Act, 1962 read with the Customs Baggage Declaration Regulation, 2013 as amended. He in his statement admitted that the gold was not purchased by him and was given by a person on the instruction of Shri Bahadurbhai.

**25.5** It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. I find that the noticee had not filed the baggage declaration form and had not declared the said gold which was in his possession, as envisaged under Section 77 of the Act read with the

Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 and they were tried to exit through Green Channel which shows that the noticee was trying to smuggle the goods and trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - *"eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days.* I find that the noticee have not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported derived gold bars total net weighing 1413.39 Grams extracted from the gold paste recovered from the possession of Shri Kaushikkumar Mahipatlal Patel having market value of Rs. 91,64,421/-, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects and accordingly, the noticee has not fulfilled the conditions of eligible passenger to brough the gold. The noticee has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

**25.6** In terms of Section 111(d) of the Customs Act, 1962, the following goods brought from a place outside India shall liable to confiscation: -

*(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*

Import of gold into India is regulated under various provisions and subject to strict conditions. According to Notification No. 50/2017-Customs dated 30.06.2017, as amended Gold, with description as below, is allowed to be imported by eligible passengers upon payment of applicable rate of duty subject to specific conditions as below being fulfilled.

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Serial No. 356 (i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger, subject to fulfillment of Condition No. 41 of the Subject Notification.

Serial No. 356 (ii) Gold in any form other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls, subject to fulfillment of Condition No. 41 of the Subject Notification. Condition 41 of the said Notification No. 50/2017 dated 30.06.2017, as amended states that:-

If,-

1. (a) the duty is paid in convertible foreign currency;  
(b) the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of silver per eligible passenger; and
2. the gold or silver is,-

(a)carried by the eligible passenger at the time of his arrival in India, or

(b) the total quantity of gold under items (i) and (ii) of Sr. No. 356 does not exceed one kilogram and the quantity of silver under Sr. No. 357 does not exceed ten kilograms per eligible passenger; and

(c) is taken delivery of from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Ltd., subject to the conditions 1 ;

Provided that such eligible passenger files a declaration in the prescribed form before the proper officer of customs at the time of his arrival in India declaring his intention to take delivery of the gold or silver from such a customs bonded warehouse and pays the duty leviable thereon before his clearance from customs.

*Explanation.- For the purposes of this notification, "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not availed of the exemption under this notification or under the notification being superseded at any time of such short visits*

From the facts of the case available on record, it is clearly appeared that conditions stipulated above were not fulfilled by the Noticee. As per the statement of Shri Kaushikkumar Mahipatlal Patel recorded under Section 108 of the Customs Act, 1962, he went to Bangkok for work purpose on 27.01.2024 and return on 30.01.2024, thus he had returned before the stipulated time of stay as prescribed to import the gold. I find that well defined and exhaustive conditions and restrictions are imposed on import of various forms of gold by eligible passenger(s)/nominated banks/nominated agencies/premier or star trading houses/SEZ units/EOUs. These conditions are nothing but restrictions imposed on import of gold. In the subject case, it appears that no such condition was satisfied rendering it a clear case of smuggling. It is pertinent to mention here that Hon'ble Supreme Court of India in Sheikh Mohd. Omer Vs. Collector of Customs, Calcutta [1983 (13) ELT 1439] clearly laid down that any prohibition applies to every type of prohibitions which may be complete or partial and even a restriction on import or export is to an extent a prohibition. Hence, the restriction on import of various forms of gold is to an extent a prohibition and any violation of the said conditions/restrictions would make the subject goods i.e 02 derived gold bars weighing 1413.39 grams derived from gold paste in this case, liable for confiscation under Section 111(d) of the Customs Act, 1962.

**(II)** In terms of Section 111 (l) of the Customs Act, 1962, the following goods brought from a place outside India shall be liable to confiscation –

*(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;*

I find that the said gold paste concealed in 04 strips and 01 packet was not declared by Shri Kaushikkumar Mahipatlal Patel to the Customs under Section 77 of the Customs Act, 1962 and he passed through the Green Channel. As per the facts of the case available on record and as discussed above, no such declaration of the impugned goods, namely gold paste which were found concealed and recovered in manner as described above, was made by the Noticee Shri Kaushikkumar Mahipatlal Patel, in the prescribed declaration form. Also, I find that he was not eligible to import gold and that too undeclared in substantial quantity and hence the

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same constitute prohibited goods, which are liable to confiscation under Section 111 (l) of the Customs Act, 1962.

**(III)** in terms of Section 111(m) of the Customs Act, 1962, the following goods brought from place outside India shall liable to confiscation-

*(m) any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54];*

In this regard, I find that 1413.39 grams of derived gold bars of foreign origin was recovered from possession of Shri Kaushikkumar Mahipatlal Patel and admittedly smuggled into India. On test, those gold were found to be of purity of 999.0/24kt. Moreover, I find that Shri Kaushikkumar Mahipatlal Patel could not produce any licit or valid documents regarding their legal importation/acquisition/possession/transportation of the gold of foreign found in person of Shri Kaushikkumar Mahipatlal Patel, thus failing to discharge his "burden of proof" that the gold was legally imported/possessed. He has also not declared the same to the customs in Indian Customs Declaration Form in terms of Section 77 of Customs Act, 1962, which read as:-

*Section 77. Declaration by owner of baggage. - The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.*

As per the facts of the case available on records, no such declaration of the impugned gold, which were found concealed in person of Shri Kaushikkumar Mahipatlal Patel in prescribed declaration form and hence the said gold bars are liable for confiscation under Section 111 (m) of the Customs Act, 1962.

**25.7** I find that the nature of concealment of gold in form of paste concealed in clothes and underwear shows that the noticee Shri Kaushikkumar Mahipatlal Patel was fully aware that the import of said goods is offending in nature. From his voluntary statement recorded under Section 108 of Custom Act, 1962, I find that the noticee has clearly admitted that he was aware of carrying the gold in paste form in his clothes and underwear in form of 04 strips and 01 packet. It is therefore very clear that he has knowingly carried the gold and failed to declare the

same to the Customs on his arrival at the Airport. *It is seen that he has involved himself in carrying, keeping, concealing and dealing with the impugned goods in a manner which they knew or had reasons to believe that the same were liable to confiscation under the Act.* From the call details records and subscriber details record, it is evidently established that the noticee was in constant touch of Shri Ketan and Shri Bhadurbhai. I find that the allegations made against the noticee are established on the basis of documentary evidences as well as digital evidences gathered during the investigation and same shows the involvement of noticee for carrying the gold paste in form of 04 strips and 01 packet from which 02 gold bars of weighing 1413.39 grams was derived. I find from the documentary and digital evidences on records and the corroborative statements of noticee clearly shows that he was involved in smuggling of gold, which was given by him a person at Bangkok on direction of Shri Bahadurbhai who manages all the expenses on behalf of the noticee. Accordingly, on the basis of documentary as well as digital evidences, mens-rea of the noticee is proved beyond doubt and the noticee has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

**26.** Further, before the Kerala High Court in the case of Abdul Razak [2012(275) ELT 300 (Ker)], the petitioner had contended that under the Foreign Trade (Exemption from application of rules in certain cases) Order, 1993, gold was not a prohibited item and can be released on payment of redemption fine. The Hon'ble High Court held as under:

*“Further, as per the statement given by the appellant under Section 108 of the Act, he is only a carrier i.e. professional smuggler smuggling goods on behalf of others for consideration. We, therefore, do not find any merit in the appellant's case that he has the right to get the confiscated gold released on payment of redemption fine and duty under Section 125 of the Act.”*

*The case has been maintained by the Hon'ble Supreme Court in Abdul Razak Vs. Union of India 2017 (350) E.L.T. A173 (S.C.) [04-05-2012]*

**27.** In the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)], the High Court upheld the absolute confiscation, ordered by the adjudicating

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authority, in similar facts and circumstances. Further, in the said case of smuggling of gold, the High Court of Madras in the case of Samynathan Murugesan reported at 2009 (247) ELT 21(Mad) has ruled that as the goods were prohibited and there was concealment, the Commissioner's order for absolute confiscation was upheld.

**28.** Further I find that in a recent case decided by the Hon'ble High Court of Madras reported at 2016-TIOL-1664-HC-MAD-CUS in respect of Malabar Diamond Gallery Pvt Ltd, the Court while holding gold jewellery as prohibited goods under Section 2(33) of the Customs Act, 1962 had recorded that "restriction" also means prohibition. In Para 89 of the order, it was recorded as under;

*89. While considering a prayer for provisional release, pending adjudication, whether all the above can wholly be ignored by the authorities, enjoined with a duty, to enforce the statutory provisions, rules and notifications, in letter and spirit, in consonance with the objects and intention of the Legislature, imposing prohibitions/restrictions under the Customs Act, 1962 or under any other law, for the time being in force, we are of the view that all the authorities are bound to follow the same, wherever, prohibition or restriction is imposed, and when the word, "restriction", also means prohibition, as held by the Hon'ble Apex Court in Om Prakash Bhatia's case (cited supra).*

**29.** The Hon'ble High Court of Madras in the matter of Commissioner of Customs (AIR), Chennai-I Versus P. SINNASAMY 2016 (344) E.L.T. 1154 (Mad.) held-

*Tribunal had arrogated powers of adjudicating authority by directing authority to release gold by exercising option in favour of respondent - Tribunal had overlooked categorical finding of adjudicating authority that respondent had deliberately attempted to smuggle 2548.3 grams of gold, by concealing and without declaration of Customs for monetary consideration - Adjudicating authority had given reasons for confiscation of gold while allowing redemption of other goods on payment of fine - Discretion exercised by authority to deny release, is in accordance with law - Interference by Tribunal is against law and unjustified -*

*Redemption fine - Option - Confiscation of smuggled gold - Redemption cannot be allowed, as a matter of right - Discretion conferred on adjudicating*

*authority to decide - Not open to Tribunal to issue any positive directions to adjudicating authority to exercise option in favour of redemption.*

**30.** In 2019 (370) E.L.T. 1743 (G.O.I.), before the Government of India, Ministry of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 07.10.2019 in F. No. 375/06/B/2017-RA stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10.05.1993 wherein it has been instructed that “in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question”.

**31.** The Hon'ble High Court of Delhi in the matter of Rameshwar Tiwari Vs. Union of India (2024) 17 Centax 261 (Del.) has held-

*"23. There is no merit in the contention of learned counsel for the Petitioner that he was not aware of the gold. Petitioner was carrying the packet containing gold. The gold items were concealed inside two pieces of Medicine Sachets which were kept inside a Multi coloured zipper jute bag further kept in the Black coloured zipper hand bag that was carried by the Petitioner. The manner of concealing the gold clearly establishes knowledge of the Petitioner that the goods were liable to be confiscated under section 111 of the Act. The Adjudicating Authority has rightly held that the manner of concealment revealed his knowledge about the prohibited nature of the goods and proved his guilt knowledge/mens-reas."*

*"26. The Supreme Court of India in State of Maharashtra v. Natwarlal Damodardas Soni [1980] 4 SCC 669/1983 (13) E.L.T. 1620 (SC)/1979 taxmann.com 58 (SC) **has held that smuggling particularly of gold, into India affects the public economy and financial stability of the country.**"*

**32.** On the basis of above discussion in light of the referred judgments and nature of concealment of the gold to smuggle the same, ***I am therefore, not inclined to use my discretion to give an option to noticee Shri Kaushikumar Mahipatlal Patel to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.***

**33.** Given the facts of the present case before me and the judgements and rulings cited above, the said derived gold bars weighing 1413.39 grams, carried by the noticee are therefore liable to be confiscated absolutely. ***I therefore hold in unequivocal terms that the said derived gold bars***

**total net weighing 1413.39 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(l) & 111(m) of the Customs Act, 1962. I also hold in unequivocal terms that the garment cloths used to conceal the gold paste recovered from the noticee, having Nil value would be liable for absolute confiscation under Section 119 of the Customs Act, 1962.**

**34.** As regard, of imposition of penalty under Section 112 of Customs, Act, 1962 in respect of Noticee Shri Kaushikkumar Mahipatlal Patel, I find that in the instant case, the principle of mens-reas on behalf of noticee are established as the noticee has failed to follow the procedure and intentionally involved in smuggling of the gold. On deciding the penalty in the instant case, I also take into consideration the observations of Hon'ble Apex Court laid down in the judgment of M/s. Hindustan Steel Ltd Vs. State of Orissa; wherein the Hon'ble Apex Court observed that "The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute." In the instant case, the noticee were attempting to smuggled the gold in form of paste and attempting to evade the Customs Duty by not declaring the derived gold bars net weighing 1413.39 grams having purity of 999.0 and 24Kt. Hence, the identity of the goods is not established and non-declaration at the time of import, is considered as an act of omission on his part. I further find that the noticee had involved himself and abetted the act of smuggling of the said gold bars weighing 1413.39 grams, carried by him. He has agreed and admitted in his statements that he had travelled from Bangkok to Ahmedabad with the said gold in form of paste concealed in clothes and underwear. Despite his knowledge and belief that the gold carried by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the noticee attempted to smuggle the said gold of 1413.39 grams, having purity 999.0 by concealment. Thus, it is clear that the noticee has concerned themselves with carrying, removing, keeping, concealing and dealing with the smuggled gold which they know very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Accordingly, I find that the

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noticee named Shri Kaushikkumar Mahipatlal Patel is liable for the penalty under Section 112(a) & 112 (b) of the Customs Act,1962 and I hold accordingly.

**34.1** Regarding imposition of penalty under Section 117 of Customs Act, 1962, I find that Section 117 of Customs Act, 1962 provide for *imposition of penalty on any person who contravenes any provision of the said Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, to be liable to a penalty not exceeding four lakhs rupees. The maximum amount of penalty prescribed under Section 117 initially at Rs. One lakh was revised upwards to Rs. Four lakhs, with effect from 01.08.2019.* The detailed discussions in the preceding paragraphs clearly prove that the noticee not only failed to fulfill the conditions but also failed to abide by the responsibilities reposed on them as per the provision of Customs Act. Hence, there are clear violations of the Section 77 & Section 79 of the Customs Act, 1962. In the instant case, the noticee accepted to carry the gold in form of paste for monetary benefit and involved himself in the smuggling of gold. Hence, it is, fit case for imposing penalty under Section 117 of Customs Act, 1962 on the noticee named Shri Kaushikkumar Mahipatlal Patel.

**35. Now, I come to allegation in the Show Cause Notice that as to whether the derived gold bars weighing 1529.33 grams and 1318.6 grams recovered from Shri Rakeshkumar D Soni (Noticee No. 3) and Smt. Dimpalben R Soni (Noticee No. 4) is liable for confiscation or otherwise and whether penalty should be imposed upon both noticees under Section 112 of Customs Act, 1962 and Section 117 of Customs Act, 1962 or not.**

**35.1 I find that the panchnama dated 30/31.01.2024 clearly draws out the fact that the Noticee No. 3 i.e Shri Rakeshkumar Dineshkumar Soni and Noticee No. 4 i.e Smt. Dimpalben Rakeshkumar Soni wife of Shri Rakeshkumar Dineshbhai Patel, who arrived from Bangkok vide flight no. TG-343, was intercepted by DRI officers and AIU officers on the basis of intelligence and during the personal search, gold paste in form of 4 strips and 01 packet having gross weight of 1775.93 grams were recovered from jeans and underwear worn by Shri Rakeshkumar Dineshkumar Soni and 04 strips and 01 packets recovered from jeans and underwear worn by Smt.**

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Dimpalben Rakeshkumar Soni having gross weight 1530.33 grams. It is also on the record that the Govt approved valuer vide his valuation report having No. 1271/2023-24 & 1272/2023-24, certified that the 02 gold bars had been extracted from said gold paste were of purity of 999.0/24Kt having Net weight 2847.93 grams (1529.33 Grams + 1318.6 grams) and having Market value of Rs. 1,84,65,978/-. It is uncontested fact that the gold in form of paste was not declared to the Customs Under Section 77 of the Customs Act, 1962 and the both noticees passed through green channel. As per the facts of case available on record and as discussed above, no such declaration of the impugned gold namely Gold bars (derived from paste), which were found concealed and recovered in manner as described above, was made by both noticees namely Shri Rakeshkumar Dineshkumar Soni and Smt. Dimpalben Rakeshkumar Soni wife of Shri Rakeshkumar Dineshbhai Patel in prescribed declaration form. I find that both the noticees were not eligible to import gold and that too undeclared in substantial quantity and hence the same cannot be treated as "bonafide baggage" in terms of section 79 of the Customs Act, 1962 and the same appropriately constitute prohibited goods which are liable to confiscation under Section 111 of the Customs Act, 1962.

**35.2** I also find that the noticee had neither questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in the panchnama during the course of recording of his statement and any later stage of the proceedings. Even during the personal hearing both of them have mentioned that the gold was purchased by them and they have not claimed any ownership on the seized gold. Every procedure conducted during the panchnama by the Officers, was well documented and made in the presence of the panchas as well as the noticee. In fact, in their statement dated 31.01.2024 & 01.02.2024, they have clearly admitted that they had travelled from Bangkok to Ahmedabad by Flight No. TG343 dated 30/31.01.2024 carrying gold in form of paste and concealed the same in their clothes; that they had intentionally not declared the substance containing foreign origin gold before the Customs authorities as they wanted to clear the same illicitly and evade payment of customs duty; that they were aware that smuggling of gold without payment of customs duty is an offence under the Customs law and thereby, violated provisions of Customs Act and the Baggage Rules, 2016. In their respective statement, they submitted that the gold was not purchased by them and was given by a person named

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Chetan at Bangkok on direction of shri Bharatbhai and for successful delivery of the same, they would receive Rs. 15,000/- each.

**35.3** I find that both the noticees have clearly accepted that they had not declared the gold in paste form concealed in their clothes (jeans and underwear) which was worn by them, to the Customs authorities. It is clear case of non-declaration with intent to smuggle the gold. Accordingly, there is sufficient evidence to conclude that the noticees had failed to declare the foreign origin gold before the Customs Authorities on their arrival at SVP International Airport, Ahmedabad. In their statements, they admitted that the gold was not purchased by them and a person named shri Chetan gave them the said gold in form of paste at Bangkok and for carrying the said gold to India, will get an amount of Rs.15,000/- each. I find that the noticees had tendered their statement voluntarily under Section 108 of Customs Act, 1962 without any threat, coercion and recorded as per their say. Therefore, it is a case of smuggling of gold without declaring in the aforesaid manner with intent to evade payment of Customs duty is conclusively proved. Thus, it is proved that noticees (Shri Rakeshkumar D Soni and Smt. Dimpalben R Soni) violated Section 77, Section 79 of the Customs Act for import/smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993 as amended, and para 2.26 of the Foreign Trade Policy 2015-20. Further as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized.

**35.4** I find that the noticees (Shri Rakeshkumar Dineshkumar Soni and Smt. Dimpalben Rakeshkumar Soni) have not claimed the ownership of the seized goods during the personal hearing and /or has submitted any documents, whatsoever in support of legal acquisition and/or importation of said gold. Section 123 of the Customs Act, 1962 stipulates:

**Section 123. Burden of proof in certain cases. -**

1 [(1) *Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled*

*goods, the burden of proving that they are not smuggled goods shall be -*

*(a) in a case where such seizure is made from the possession of any person, -*

*(i) on the person from whose possession the goods were seized; and  
(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;*

*(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.]*

*(2) This section shall apply to gold, 2 [and manufactures thereof], watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.*

In the instant case, the burden of proving that the seized derived gold bars are not smuggled goods lie on the person, who claims to be owner of the goods so seized or from whose possession the goods are seized. Thus, the onus, in the instant case for proving that the seized gold bars weighing 2847.93 grams (1529.33 Grams + 1318.6 grams) of foreign origin are not smuggled in nature lie on Shri Rakeshkumar Dineshkumar Soni and Smt. Dimpalben Rakeshkumar Soni from whose possession the gold was recovered and seized on 31.01.2024. The test report shows that gold bars derived from gold paste were found to be purity of 999.0/24Kt. I find from the records that both noticees had attended the personal hearing and submitted that they were went Bangkok for tour purpose as Shri Bharatbhai was going to bear all the expenses of trip and in return they have to carry some gold and for that they have also received an amount of Rs. 15,000/- each apart from the expenses. In temptation of quick money, they agreed to smuggle the gold from Bangkok to Ahmedabad. Further, they have submitted that they have neither purchased the gold and nor belong to them and did not claim any ownership on that, however the noticees did not any defense reply in written apart from the submission made in personal hearing. Thus, they were failed to discharge the "burden of proof that gold bars derived from the paste were legally imported/possessed and also, they had not declared the same to the customs in prescribed Indian Customs Declaration Form. Applying the ratio of judgments of the Hon'ble Supreme Court in matter of Om Prakash Bhatia Vs. Commissioner of Customs [2003(6) SSC 161] and Hon'ble High

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Court, Madras in case of Samynathan Murugesan Vs. Commissioner of Customs [2010 (254) ELT A015], I find that the said smuggled derived gold bars from gold paste total weighing 2847.93 grams ( 1529.33 Grams + 1318.6 grams ) grams of foreign origin are liable to absolute confiscation under Section 111 (d), 111(l) & 111(m) of Customs Act, 1962.

Also, I find that the instant case is a clear case of smuggling in terms of Section 2(39) of the Customs Act, 1962, where 02 gold bars weighing 2847.93 grams (1529.33 Grams + 1318.6 grams) of foreign origin were seized under Section 110 of the Customs Act, 1962 on reasonable belief that they were smuggled in to India from Bangkok. As per Sub-Section 2 of Section 123 of the Customs Act, 1962, onus for proving that the seized gold bars, having weight 2847.93 grams (1529.33 Grams + 1318.6 grams) and valued at Rs. 1,84,65,978/- are not of smuggled in nature, shall be on Shri Rakeshkumar Dineshkumar Soni and Smt. Dimpalben Rakeshkumar Soni, from whose possession the impugned goods were seized. Shri Rakeshkumar Dineshkumar Soni and Smt. Dimpalben Rakeshkumar Soni in their respective voluntary statement mentioned that the said gold in form of paste was given to them by Shri Chetan at Bangkok on the direction of Shri Bharatbhai for smuggling the said goods in India. I find that the noticees Shri Rakeshkumar Dineshkumar Soni and Smt. Dimpalben Rakeshkumar Soni could not produce any valid legal documents for procuring or transporting or possessing such gold of foreign origin. In their statements recorded under Section 108 of Customs Act, 1962, they admitted that they were aware that the gold paste, they were carrying, had been smuggled into India from Bangkok and they were knowingly carrying the smuggled gold from Bangkok to Ahmedabad for monetary benefits. It shows that knowingly and consciously they were involved in carrying and handling the foreign origin gold which they have reasons to believe or know, was liable for confiscation under Section 111 of said Act and intentionally not made any declaration in Customs Declaration Form, which is required as per Section 77 of Customs Act, 1962 read with the Customs Baggage Declaration Regulation, 2013 as amended.

**35.5** It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct

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declaration of their baggage. I find that the both noticees had not filed the baggage declaration form and had not declared the said gold which was in their possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 and they were tried to exit through Green Channel which shows that the noticees were trying to smuggle the goods and trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - *"eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days.* I find that the noticees have not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported derived gold bars total net weighing 2847.93 grams (1529.33 Grams + 1318.6 grams) extracted from the gold paste recovered from the possession of Shri Rakeshkumar Dineshkumar Soni and Smt. Dimpalben Rakeshkumar Soni having market value of Rs. 1,84,65,978/-, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects and accordingly, both the noticees have not fulfilled the conditions of eligible passenger to bring the gold. The noticee has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

**35.6** In terms of Section 111(d) of the Customs Act, 1962, the following goods brought from a place outside India shall liable to confiscation: -

*(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*

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Import of gold into India is regulated under various provisions and subject to strict conditions. According to Notification No. 50/2017-Customs dated 30.06.2017, as amended Gold, with description as below, is allowed to be imported by eligible passengers upon payment of applicable rate of duty subject to specific conditions as below being fulfilled.

*Serial No. 356 (i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger, subject to fulfillment of Condition No. 41 of the Subject Notification.*

*Serial No. 356 (ii) Gold in any form other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls, subject to fulfillment of Condition No. 41 of the Subject Notification. Condition 41 of the said Notification No. 50/2017 dated 30.06.2017, as amended states that:-*

If,-

1. (a) *the duty is paid in convertible foreign currency;*  
*(b) the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of silver per eligible passenger; and*
2. *the gold or silver is,-*

*(a)carried by the eligible passenger at the time of his arrival in India, or*

*(b) the total quantity of gold under items (i) and (ii) of Sr. No. 356 does not exceed one kilogram and the quantity of silver under Sr. No. 357 does not exceed ten kilograms per eligible passenger; and*

*(c) is taken delivery of from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Ltd., subject to the conditions 1 ;*

*Provided that such eligible passenger files a declaration in the prescribed form before the proper officer of customs at the time of his arrival in India declaring his intention to take delivery of the gold or silver from such a customs bonded warehouse and pays the duty leviable thereon before his clearance from customs.*

*Explanation.- For the purposes of this notification, "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if*

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*any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not availed of the exemption under this notification or under the notification being superseded at any time of such short visits*

From the facts of the case available on record, it is clearly appeared that conditions stipulated above were not fulfilled by the Noticees. As per the statements of Shri Rakeshkumar Dineshkumar Soni and Smt. Dimpalben Rakeshkumar Soni recorded under Section 108 of the Customs Act, 1962, they went to Bangkok for trip on 27.01.2024 and return on 30.01.2024, thus returning before the stipulated time of stay as prescribed to import the gold as eligible passengers. I find that well defined and exhaustive conditions and restrictions are imposed on import of various forms of gold by eligible passenger(s)/nominated banks/nominated agencies/premier or star trading houses/SEZ units/EOUs. These conditions are nothing but restrictions imposed on import of gold. In the subject case, it appears that no such condition was satisfied rendering it a clear case of smuggling. It is pertinent to mention here that Hon'ble Supreme Court of India in Sheikh Mohd. Omer Vs. Collector of Customs, Calcutta [1983 (13) ELT 1439] clearly laid down that any prohibition applies to every type of prohibitions which may be complete or partial and even a restriction on import or export is to an extent a prohibition. Hence, the restriction on import of various forms of gold is to an extent a prohibition and any violation of the said conditions/restrictions would make the subject goods i.e 02 derived gold bars weighing 2847.93 grams (1529.33 Grams + 1318.6 grams) derived from gold paste in this case, liable for confiscation under Section 111(d) of the Customs Act, 1962.

**(II)** In terms of Section 111 (l) of the Customs Act, 1962, the following goods brought from a place outside India shall be liable to confiscation –

*(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;*

I find that the said gold paste concealed in 04 strips and 01 packet by Shri Rakeshkumar Dineshkumar Soni and gold paste concealed in 04 strips and 01 packet by Smt. Dimpalben Rakeshkumar Soni was not

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declared by them to the Customs under Section 77 of the Customs Act, 1962 and they passed through the Green Channel. As per the facts of the case available on record and as discussed above, no such declaration of the impugned goods, namely gold paste which were found concealed in clothes of noticees and recovered in manner as described above, was made by the Noticees Shri Rakeshkumar Dineshkumar Soni and Smt. Dimpalben Rakeshkumar Soni in the prescribed declaration form. Also, I find that they were not eligible to import gold and that too undeclared in substantial quantity and hence the same constitute prohibited goods, which are liable to confiscation under Section 111 (l) of the Customs Act, 1962.

**(III)** in terms of Section 111(m) of the Customs Act, 1962, the following goods brought from place outside India shall liable to confiscation-

*(m) any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54];*

In this regard, I find that 2847.93 grams (1529.33 Grams + 1318.6 grams) of derived gold bars of foreign origin was recovered from possession of Shri Rakeshkumar Dineshkumar Soni and Smt. Dimpalben Rakeshkumar Soni and admittedly smuggled into India. On test, those gold were found to be of purity of 999.0/24kt. Moreover, I find that Shri Rakeshkumar Dineshkumar Soni and Smt. Dimpalben Rakeshkumar Soni could not produce any licit or valid documents regarding their legal importation/acquisition/possession/transportation of the gold of foreign found in person of Shri Rakeshkumar Dineshkumar Soni and Smt. Dimpalben Rakeshkumar Soni, thus failing to discharge his "burden of proof" that the gold was legally imported/possessed. He has also not declared the same to the customs in Indian Customs Declaration Form in terms of Section 77 of Customs Act, 1962, which read as:-

*Section 77. Declaration by owner of baggage. - The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.*

As per the facts of the case available on records, no such declaration of the impugned gold, which were found concealed in person of Shri Rakeshkumar Dineshkumar Soni and Smt. Dimpalben

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Rakeshkumar Soni in prescribed declaration form and hence the said gold bars are liable for confiscation under Section 111 (m) of the Customs Act, 1962.

**35.7** I find that the nature of concealment of gold in form of paste concealed in clothes and underwear shows that both the noticee Shri Rakeshkumar Dineshkumar Soni and Smt. Dimpalben Rakeshkumar Soni were fully aware that the import of said goods is offending in nature. From their voluntary statement recorded under Section 108 of Custom Act, 1962, I find that the noticees have clearly admitted that they were aware of carrying the gold in paste form in their clothes and underwear in form of 08 strips and 02 packet (04 strips and 01 packet each). It is therefore very clear that they have knowingly carried the gold and failed to declare the same to the Customs on his arrival at the Airport. It is seen that they have involved themselves in carrying, keeping, concealing and dealing with the impugned goods in a manner which they knew or had reasons to believe that the same were liable to confiscation under the Act. I find that the allegations made against the noticees under SCN are established beyond doubts on the basis of documentary and digital evidences gathered during the investigation and also establish their involvement in smuggling of gold paste in form of 08 strips and 02 packet (04 strips and 01 packet each) from which 02 gold bars of weighing 2847.93 grams (1529.33 Grams + 1318.6 grams) were derived. I find from the documentary and digital evidences on record and the corroborative statement of noticee that they were involved in smuggling of gold, which was given by shri Chetan at Bangkok on direction of Shri Bharatbhai who manages all expenses for their trip. It, is therefore, mens-rea of the noticees are proved beyond doubt and the noticees have committed an offence of the nature described in Section 112 of Customs Act, 1962 making them liable for penalty under Section 112 of the Customs Act, 1962.

**36.** Further, before the Kerala High Court in the case of Abdul Razak [2012(275) ELT 300 (Ker)], the petitioner had contended that under the Foreign Trade (Exemption from application of rules in certain cases) Order, 1993, gold was not a prohibited item and can be released on payment of redemption fine. The Hon'ble High Court held as under:

*“Further, as per the statement given by the appellant under Section 108 of the Act, he is only a carrier i.e. professional smuggler smuggling goods on behalf of others for consideration. We, therefore, do not find*

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*any merit in the appellant's case that he has the right to get the confiscated gold released on payment of redemption fine and duty under Section 125 of the Act."*

*The case has been maintained by the Hon'ble Supreme Court in Abdul Razak Vs. Union of India 2017 (350) E.L.T. A173 (S.C.) [04-05-2012]*

**37.** In the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)], the High Court upheld the absolute confiscation, ordered by the adjudicating authority, in similar facts and circumstances. Further, in the said case of smuggling of gold, the High Court of Madras in the case of Samynathan Murugesan reported at 2009 (247) ELT 21(Mad) has ruled that as the goods were prohibited and there was concealment, the Commissioner's order for absolute confiscation was upheld.

**38.** Further I find that in a recent case decided by the Hon'ble High Court of Madras reported at 2016-TIOL-1664-HC-MAD-CUS in respect of Malabar Diamond Gallery Pvt Ltd, the Court while holding gold jewellery as prohibited goods under Section 2(33) of the Customs Act, 1962 had recorded that "restriction" also means prohibition. In Para 89 of the order, it was recorded as under;

*89. While considering a prayer for provisional release, pending adjudication, whether all the above can wholly be ignored by the authorities, enjoined with a duty, to enforce the statutory provisions, rules and notifications, in letter and spirit, in consonance with the objects and intention of the Legislature, imposing prohibitions/restrictions under the Customs Act, 1962 or under any other law, for the time being in force, we are of the view that all the authorities are bound to follow the same, wherever, prohibition or restriction is imposed, and when the word, "restriction", also means prohibition, as held by the Hon'ble Apex Court in Om Prakash Bhatia's case (cited supra).*

**39.** The Hon'ble High Court of Madras in the matter of Commissioner of Customs (AIR), Chennai-I Versus P. SINNASAMY 2016 (344) E.L.T. 1154 (Mad.) held-

*Tribunal had arrogated powers of adjudicating authority by directing authority to release gold by exercising option in favour of respondent - Tribunal had overlooked categorical finding of adjudicating authority that respondent had deliberately attempted to smuggle 2548.3 grams of gold, by concealing and*

*without declaration of Customs for monetary consideration - Adjudicating authority had given reasons for confiscation of gold while allowing redemption of other goods on payment of fine - Discretion exercised by authority to deny release, is in accordance with law - Interference by Tribunal is against law and unjustified –*

*Redemption fine - Option - Confiscation of smuggled gold - Redemption cannot be allowed, as a matter of right - Discretion conferred on adjudicating authority to decide - Not open to Tribunal to issue any positive directions to adjudicating authority to exercise option in favour of redemption.*

**40.** In 2019 (370) E.L.T. 1743 (G.O.I.), before the Government of India, Ministry of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 07.10.2019 in F. No. 375/06/B/2017-RA stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10.05.1993 wherein it has been instructed that “in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question”.

**41.** The Hon'ble High Court of Delhi in the matter of Rameshwar Tiwari Vs. Union of India (2024) 17 Centax 261 (Del.) has held-

*“23. There is no merit in the contention of learned counsel for the Petitioner that he was not aware of the gold. Petitioner was carrying the packet containing gold. The gold items were concealed inside two pieces of Medicine Sachets which were kept inside a Multi coloured zipper jute bag further kept in the Black coloured zipper hand bag that was carried by the Petitioner. The manner of concealing the gold clearly establishes knowledge of the Petitioner that the goods were liable to be confiscated under section 111 of the Act. The Adjudicating Authority has rightly held that the manner of concealment revealed his knowledge about the prohibited nature of the goods and proved his guilt knowledge/mens-rea.”*

*“26. The Supreme Court of India in State of Maharashtra v. Natwarlal Damodardas Soni [1980] 4 SCC 669/1983 (13) E.L.T. 1620 (SC)/1979 taxmann.com 58 (SC) **has held that smuggling particularly of gold, into India affects the public economy and financial stability of the country.**”*

**42.** On the basis of above discussion in light of the referred judgments and nature of concealment of the gold to smuggle the same, ***I am therefore, not inclined to use my discretion to give an option to noticees Shri***

***Rakeshkumar Dineshkumar Soni and Smt. Dimpalben Rakeshkumar Soni to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.***

**43.** Given the facts of the present case before me and the judgements and rulings cited above, the said derived gold bars weighing 2847.93 grams (1529.33 Grams + 1318.6 grams), carried by the noticees are therefore liable to be confiscated absolutely. **I therefore hold in unequivocal terms that the said derived gold bars total net weighing 2847.93 grams (1529.33 Grams + 1318.6 grams), placed under seizure would be liable to absolute confiscation under Section 111(d), 111(l) & 111(m) of the Customs Act, 1962. I also hold in unequivocal terms that the garment cloths used to conceal the gold paste recovered from the noticees, having Nil value would be liable for absolute confiscation under Section 119 of the Customs Act, 1962.**

**44.** As regard, of imposition of penalty under Section 112 of Customs, Act, 1962 in respect of Noticees Shri Rakeshkumar Dineshkumar Soni and Smt. Dimpalben Rakeshkumar Soni, I find that in the instant case, the principle of mens-reas on behalf of both noticees are established as the noticees have failed to follow the procedure and intentionally involved in smuggling of the gold. On deciding the penalty in the instant case, I also take into consideration the observations of Hon'ble Apex Court laid down in the judgment of M/s. Hindustan Steel Ltd Vs. State of Orissa; wherein the Hon'ble Apex Court observed that "The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute." In the instant case, both the noticees were attempting to smuggled the gold in form of paste and attempting to evade the Customs Duty by not declaring the derived gold bars net weighing 2847.93 grams ( 1529.33 Grams + 1318.6 grams ) having purity of 999.0 and 24Kt. Hence, the identity of the goods is not established and non-declaration at the time of import, is considered as an act of omission on their part. I further find that both the noticees had involved themselves and abetted the act of smuggling of the said gold bars weighing

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2847.93 grams ( 1529.33 Grams + 1318.6 grams ), carried by them. He has agreed and admitted in their respective statements that they had travelled from Bangkok to Ahmedabad with the said gold in form of paste concealed in clothes and underwear. Despite their knowledge and belief that the gold carried by them is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the noticees attempted to smuggle the said gold of 2847.93 grams ( 1529.33 Grams + 1318.6 grams ), having purity 999.0 by concealment. Thus, it is clear that the noticees have concerned themselves with carrying, removing, keeping, concealing and dealing with the smuggled gold which they know very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Accordingly, I find that the noticees named Shri Rakeshkumar Dineshkumar Soni and Smt. Dimpalben Rakeshkumar Soni are liable for the penalty under Section 112(a) & 112 (b) of the Customs Act,1962 and I hold accordingly.

**44.1** Regarding imposition of penalty under Section 117 of Customs Act, 1962, I find that Section 117 of Customs Act, 1962 provide for *imposition of penalty on any person who contravenes any provision of the said Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, to be liable to a penalty not exceeding four lakhs rupees. The maximum amount of penalty prescribed under Section 117 initially at Rs. One lakh was revised upwards to Rs. Four lakhs, with effect from 01.08.2019.* The detailed discussions in the preceding paragraphs clearly prove that both the noticees not only failed to fulfill the conditions but also failed to abide by the responsibilities reposed on them as per the provision of Customs Act. Hence, there are clear violations of the Section 77 & Section 79 of the Customs Act, 1962. In the instant case, both noticees accepted to carry the gold in form of paste for monetary benefit and involved themselves in the smuggling of gold. Hence, it is, fit case for imposing penalty under Section 117 of Customs Act, 1962 on the noticees named Shri Rakeshkumar Dineshkumar Soni and Smt. Dimpalben Rakeshkumar Soni.

**45. Now, I come to allegation in the Show Cause Notice that as to whether the derived gold bar weighing 1401.06 grams recovered from Shri Anil Babulal Soni (Noticee No. 2) is liable for confiscation or**

**otherwise and whether penalty should be imposed upon both noticee under Section 112 of Customs Act, 1962 and Section 117 of Customs Act, 1962 or otherwise.**

**45.1 I find that the panchnama dated 30/31.01.2024 clearly draws out the fact that the** Noticee No. 2 i.e Shri Anil Babulal Soni, who arrived from Bangkok vide flight no. TG-343, was intercepted by DRI officers and AIU officers on the basis of intelligence and during the personal search, gold paste in form of 4 strips and 01 packet having gross weight of 1626.38 grams were recovered from jeans and underwear worn by the noticee. It is also on the record that the Govt approved valuer vide his valuation report having No. 1275/2023-24, certified that 01 gold bar has been extracted from said gold paste were of purity of 999.0/24Kt having Net weight 1401.06 grams and having Market value of Rs. 90,84,473/-. It is uncontested fact that the gold in form of paste was not declared to the Customs Under Section 77 of the Customs Act, 1962 and the noticee passed through green channel. As per the facts of case available on record and as discussed above, no such declaration of the impugned gold namely Gold bar (derived from paste), which were found concealed and recovered in manner as described above, was made by the noticee namely Shri Anil Babulal Soni in prescribed declaration form. I find that the noticee was not eligible to import gold and that too undeclared in substantial quantity and hence the same cannot be treated as "bonafide baggage" in terms of section 79 of the Customs Act, 1962 and the same appropriately constitute prohibited goods which are liable to confiscation under Section 111 of the Customs Act, 1962.

**45.2 I also find that the noticee had neither questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in the panchnama during the course of recording of his statement and any later stage of the proceedings. Every procedure conducted during the panchnama by the Officers, was well documented and made in the presence of the panchas as well as the noticee. In fact, in his statements dated 31.01.2024 & 01.02.2024, he has clearly admitted that he had travelled from Bangkok to Ahmedabad by Flight No. TG343 dated 30/31.01.2024 carrying gold in form of paste and concealed the same in his clothes; that he had intentionally not declared the substance containing foreign origin gold before the Customs authorities as he wanted to clear the same illicitly and evade payment of customs duty; that he was aware that smuggling of gold without payment of customs duty is an offence under the**

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Customs law and thereby, violated provisions of Customs Act and the Baggage Rules, 2016. In his voluntary statement, he submitted that the gold was not purchased by him and was given by a person named Shri Ketan/Chetan at Bangkok and for successful delivery of the same, he would receive Rs. 20,000/-.

**45.3** I find that the noticee has clearly accepted that he had not declared the gold in paste form concealed in his clothes which were worn by him, to the Customs authorities. It is clear case of non-declaration with intent to smuggle the gold. Accordingly, there is sufficient evidence to conclude that the noticee had failed to declare the foreign origin gold before the Customs Authorities on his arrival at SVP International Airport, Ahmedabad. In the statement, he admitted that the gold was not purchased by him and some unknown person gave him the said gold in form of paste at Bangkok and for carrying the said gold to India, will get an amount of Rs.20,000/-. I find that the noticee had gave his statement voluntarily under Section 108 of Customs Act, 1962 without any threat, coercion and recorded as per his say. Therefore, it is a case of smuggling of gold without declaring in the aforesaid manner with intent to evade payment of Customs duty is conclusively proved. Thus, it is proved that passenger violated Section 77, Section 79 of the Customs Act for import/smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993 as amended, and para 2.26 of the Foreign Trade Policy 2015-20. Further as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized.

**45.4** I find that the noticee has not came forward to claim the ownership of the seized goods and /or has submitted any documents, whatsoever in support of legal acquisition and/or importation of said gold. Section 123 of the Customs Act, 1962 stipulates: -

**Section 123. Burden of proof in certain cases. -**

*1 [(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be -*

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*(a) in a case where such seizure is made from the possession of any person, -*  
*(i) on the person from whose possession the goods were seized; and*  
*(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;*  
*(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.]*

*(2) This section shall apply to gold, 2 [and manufactures thereof], watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.*

In the instant case, the burden of proving that the seized derived gold bar is not smuggled goods lie on the person, who claims to be owner of the goods so seized or from whose possession the goods are seized. Thus, the onus, in the instant case for proving that the seized gold bar weighing 1401.06 grams of foreign origin are not smuggled in nature lie on noticee Shri Anil B Soni, from whose possession the gold was recovered and seized on 31.01.2024. The test report shows that gold bar derived from gold paste was of purity of 999.0/24Kt. I find from the records that sufficient opportunity was given to be heard in person and to submit his defense reply against the allegation made under subject SCN, to the Shri Anil B Soni, however the noticee did not turned up and neither file any defense reply nor avail the opportunity of personal hearing which shows his reluctant behavior and he was not bothered about the ongoing adjudication proceeding. Accordingly, I hold that the noticee has nothing to submit in his defense and the noticee Shri Anil B Soni could not produce any licit or valid documents regarding their legal importation/acquisition/possession/transportation of the gold of foreign origin found in his possession. Thus, he was failed to discharge the "burden of proof that gold bar derived from the paste was legally imported/possessed and also, he had not declared the same to the customs in prescribed Indian Customs Declaration Form. Applying the ratio of judgments of the Hon'ble Supreme Court in matter of Om Prakash Bhatia Vs. Commissioner of Customs [2003(6) SSC 161] and Hon'ble High Court, Madras in case of Samynathan Murugesan Vs. Commissioner of Customs [2010 (254) ELT A015], I find that the said smuggled derived gold bar weighing 1401.06 grams of foreign origin are liable to absolute confiscation under Section 111 (d), 111(l) & 111(m) of Customs Act, 1962.

Also, I find that the instant case is a clear case of smuggling in terms of Section 2(39) of the Customs Act, 1962, where 01 gold bar weighing 1401.06 grams of foreign origin was seized under Section 110 of the Customs Act, 1962 on reasonable belief that the same was smuggled in to India from Bangkok. As per Sub-Section 2 of Section 123 of the Customs Act, 1962, onus for proving that the seized gold bar, having weight 1401.06 grams and valued at Rs.90,84,473/- are not of smuggled in nature, shall be on Shri Anil B Soni, from whose possession the impugned goods were seized. Shri Anil B Soni in his statement mentioned that the said gold in form of paste was given to him by Shri Ketan/Chetan at Bangkok on the direction of Shri Bahadurbhai for smuggling the said goods in India. I find that the noticee Shri Anil B Soni could not produce any valid legal documents for procuring or transporting or possessing such gold of foreign origin. In his statement recorded under Section 108 of Customs Act, 1962, he admitted that he was aware that the gold paste, he was carrying, had been smuggled into India from Bangkok and he was knowingly carrying the smuggled gold from Bangkok to Ahmedabad for monetary benefits. It shows that knowingly and consciously he was involved in carrying and handling the foreign origin gold which he has reasons to believe or know, was liable for confiscation under Section 111 of said Act and intentionally not made any declaration in Customs Declaration Form, which is required as per Section 77 of Customs Act, 1962 read with the Customs Baggage Declaration Regulation, 2013 as amended. He in his statement admitted that the gold was not purchased by him and was given by Shri Ketan/Chetan on the instruction of Shri Bahadurbhai.

**45.5** It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. I find that the noticee had not filed the baggage declaration form and had not declared the said gold which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 and he was tried to exit through Green Channel which shows that the noticee was trying to smuggle the goods and trying to evade the payment of eligible customs duty. I also find that the definition of “eligible passenger” is provided under

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Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - *"eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days.* I find that the noticee has not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported derived gold bar weighing 1401.06 Grams extracted from the gold paste recovered from the possession of Shri Anil B Soni having market value of Rs. 90,84,473/-, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects and accordingly, the noticee has not fulfilled the conditions of eligible passenger to bring the gold. The noticee has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

**45.6** In terms of Section 111(d) of the Customs Act, 1962, the following goods brought from a place outside India shall liable to confiscation: -

*(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*

Import of gold into India is regulated under various provisions and subject to strict conditions. According to Notification No. 50/2017-Customs dated 30.06.2017, as amended Gold, with description as below, is allowed to be imported by eligible passengers upon payment of applicable rate of duty subject to specific conditions as below being fulfilled.

*Serial No. 356 (i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger, subject to fulfillment of Condition No. 41 of the Subject Notification.*

*Serial No. 356 (ii) Gold in any form other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls, subject to*

fulfillment of Condition No. 41 of the Subject Notification. Condition 41 of the said Notification No. 50/2017 dated 30.06.2017, as amended states that:-

If,-

1. (a) the duty is paid in convertible foreign currency;  
(b) the quantity of import does not exceed ten kilograms of gold and one hundred kilograms of silver per eligible passenger; and
2. the gold or silver is,-  
(a) carried by the eligible passenger at the time of his arrival in India, or  
(b) the total quantity of gold under items (i) and (ii) of Sr. No. 356 does not exceed one kilogram and the quantity of silver under Sr. No. 357 does not exceed ten kilograms per eligible passenger; and  
(c) is taken delivery of from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Ltd., subject to the conditions 1 ;

Provided that such eligible passenger files a declaration in the prescribed form before the proper officer of customs at the time of his arrival in India declaring his intention to take delivery of the gold or silver from such a customs bonded warehouse and pays the duty leviable thereon before his clearance from customs.

*Explanation.- For the purposes of this notification, "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not availed of the exemption under this notification or under the notification being superseded at any time of such short visits*

From the facts of the case available on record, it is clearly appeared that conditions stipulated above were not fulfilled by the Noticee. As per the statement of Shri Anil B Soni recorded under Section 108 of the Customs Act, 1962, he went to Bangkok for pleasure trip on 27.01.2024 and return on 30.01.2024, thus the noticee has returned back before the stipulated time of stay as prescribed to import the gold. I find that well defined and exhaustive conditions and restrictions are imposed on import of various forms of gold by eligible passenger(s)/nominated banks/nominated agencies/premier or star trading houses/SEZ units/EOUs. These conditions are nothing but restrictions imposed on import of gold. In the subject case, it appears that no

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such condition was satisfied rendering it a clear case of smuggling. It is pertinent to mention here that Hon'ble Supreme Court of India in Sheikh Mohd. Omer Vs. Collector of Customs, Calcutta [1983 (13) ELT 1439] clearly laid down that any prohibition applies to every type of prohibitions which may be complete or partial and even a restriction on import or export is to an extent a prohibition. Hence, the restriction on import of various forms of gold is to an extent a prohibition and any violation of the said conditions/restrictions would make the subject goods i.e 01 derived gold bar weighing 1401.06 grams derived from gold paste in this case, liable for confiscation under Section 111(d) of the Customs Act, 1962.

**(II)** In terms of Section 111 (l) of the Customs Act, 1962, the following goods brought from a place outside India shall be liable to confiscation –

*(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;*

I find that the said gold paste concealed in 04 strips and 01 packet was not declared by Shri Anil B Soni to the Customs under Section 77 of the Customs Act, 1962 and he passed through the Green Channel. As per the facts of the case available on record and as discussed above, no such declaration of the impugned goods, namely gold paste which was found concealed and recovered in manner as described above, was made by the Noticee Shri Anil B Soni, in the prescribed declaration form. Also, I find that he was not eligible to import gold and that too undeclared in substantial quantity and hence the same constitute prohibited goods, which are liable to confiscation under Section 111 (l) of the Customs Act, 1962.

**(III)** in terms of Section 111(m) of the Customs Act, 1962, the following goods brought from place outside India shall liable to confiscation-

*(m) any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54];*

In this regard, I find that 1401.06 grams of derived gold bar of foreign origin was recovered from possession of Shri Anil B Soni and admittedly smuggled

into India. On test, those gold was found to be of purity of 999.0/24kt. Moreover, I find that Shri Anil B Soni could not produce any licit or valid documents regarding their legal importation/acquisition/possession/transportation of the gold of foreign origin found in person of Shri Anil B Soni, thus failing to discharge his "burden of proof" that the gold was legally imported/possessed. He has also not declared the same to the customs in Indian Customs Declaration Form in terms of Section 77 of Customs Act, 1962, which read as:-

*Section 77. Declaration by owner of baggage. - The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.*

As per the facts of the case available on records, no such declaration of the impugned gold, which were found concealed in person of Shri Anil B Soni in prescribed declaration form and hence the said gold bars are liable for confiscation under Section 111 (m) of the Customs Act, 1962.

**45.7** I find that the nature of concealment of gold in form of paste concealed in clothes and underwear shows that the noticee Shri Anil B Soni was fully aware that the import of said goods is offending in nature. From his voluntary statement recorded under Section 108 of Custom Act, 1962, I find that the noticee has clearly admitted that he was aware of carrying the gold in paste form in his clothes and underwear in form of 04 strips and 01 packet. It is therefore very clear that he has knowingly carried the gold and failed to declare the same to the Customs on his arrival at the Airport. *It is seen that he has involved himself in carrying, keeping, concealing and dealing with the impugned goods in a manner which they knew or had reasons to believe that the same were liable to confiscation under the Act.* I find that the allegations made against the noticee are established on documentary and digital evidences beyond the doubts and established his involvement for carrying the gold paste in form of 04 strips and 01 packet from which 01 gold bar of weighing 1401.06 grams was derived. I find from the documentary and digital evidences on record and the corroborative statement of noticee that he was involved in smuggling of gold, which was given to him by Shri Ketan/Chetan at Bangkok on direction of Shri Bahadurbhai who manages his all expenses. It, is therefore, in the instant case, mens-reas of the noticee is proved beyond doubt and the noticee has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

**46.** Further, before the Kerala High Court in the case of Abdul Razak [2012(275) ELT 300 (Ker)], the petitioner had contended that under the Foreign Trade (Exemption from application of rules in certain cases) Order, 1993, gold was not a prohibited item and can be released on payment of redemption fine. The Hon'ble High Court held as under:

*“Further, as per the statement given by the appellant under Section 108 of the Act, he is only a carrier i.e. professional smuggler smuggling goods on behalf of others for consideration. We, therefore, do not find any merit in the appellant's case that he has the right to get the confiscated gold released on payment of redemption fine and duty under Section 125 of the Act.”*

*The case has been maintained by the Hon'ble Supreme Court in Abdul Razak Vs. Union of India 2017 (350) E.L.T. A173 (S.C.) [04-05-2012]*

**47.** In the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)], the High Court upheld the absolute confiscation, ordered by the adjudicating authority, in similar facts and circumstances. Further, in the said case of smuggling of gold, the High Court of Madras in the case of Samynathan Murugesan reported at 2009 (247) ELT 21(Mad) has ruled that as the goods were prohibited and there was concealment, the Commissioner's order for absolute confiscation was upheld.

**48.** Further I find that in a recent case decided by the Hon'ble High Court of Madras reported at 2016-TIOL-1664-HC-MAD-CUS in respect of Malabar Diamond Gallery Pvt Ltd, the Court while holding gold jewellery as prohibited goods under Section 2(33) of the Customs Act, 1962 had recorded that “restriction” also means prohibition. In Para 89 of the order, it was recorded as under;

*89. While considering a prayer for provisional release, pending adjudication, whether all the above can wholly be ignored by the authorities, enjoined with a duty, to enforce the statutory provisions, rules and notifications, in letter and spirit, in consonance with the objects and intention of the Legislature, imposing prohibitions/restrictions under the Customs Act, 1962 or under any other law, for the time being in force, we are of the view that all the authorities are bound to follow the same, wherever, prohibition or restriction is imposed, and when the word, “restriction”, also means prohibition, as held by the Hon'ble Apex Court in Om Prakash Bhatia's case (cited supra).*

**49.** The Hon'ble High Court of Madras in the matter of Commissioner of Customs (AIR), Chennai-I Versus P. SINNASAMY 2016 (344) E.L.T. 1154 (Mad.) held-

*Tribunal had arrogated powers of adjudicating authority by directing authority to release gold by exercising option in favour of respondent - Tribunal had overlooked categorical finding of adjudicating authority that respondent had deliberately attempted to smuggle 2548.3 grams of gold, by concealing and without declaration of Customs for monetary consideration - Adjudicating authority had given reasons for confiscation of gold while allowing redemption of other goods on payment of fine - Discretion exercised by authority to deny release, is in accordance with law - Interference by Tribunal is against law and unjustified –*

*Redemption fine - Option - Confiscation of smuggled gold - Redemption cannot be allowed, as a matter of right - Discretion conferred on adjudicating authority to decide - Not open to Tribunal to issue any positive directions to adjudicating authority to exercise option in favour of redemption.*

**50.** In 2019 (370) E.L.T. 1743 (G.O.I.), before the Government of India, Ministry of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 07.10.2019 in F. No. 375/06/B/2017-RA stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10.05.1993 wherein it has been instructed that “in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question”.

**51.** The Hon'ble High Court of Delhi in the matter of Rameshwar Tiwari Vs. Union of India (2024) 17 Centex 261 (Del.) has held-

*“23. There is no merit in the contention of learned counsel for the Petitioner that he was not aware of the gold. Petitioner was carrying the packet containing gold. The gold items were concealed inside two pieces of Medicine Sachets which were kept inside a Multi coloured zipper jute bag further kept in the Black coloured zipper hand bag that was carried by the Petitioner. The manner of concealing the gold clearly establishes knowledge of the Petitioner that the goods were liable to be confiscated under section 111 of the Act. The Adjudicating Authority has rightly held that the manner of concealment revealed his knowledge about the prohibited nature of the goods and proved his guilt knowledge/mens-reas.”*

**"26. The Supreme Court of India in State of Maharashtra v. Natwarlal Damodardas Soni [1980] 4 SCC 669/1983 (13) E.L.T. 1620 (SC)/1979 taxmann.com 58 (SC) has held that smuggling particularly of gold, into India affects the public economy and financial stability of the country."**

**52.** On the basis of above discussion in light of the referred judgments and nature of concealment of the gold to smuggle the same, ***I am therefore, not inclined to use my discretion to give an option to noticee Shri Anil B Soni to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.***

**53.** Given the facts of the present case before me and the judgements and rulings cited above, the said derived gold bar weighing 1401.06 grams, carried by the noticee is therefore liable to be confiscated absolutely. ***I therefore hold in unequivocal terms that the said derived gold bar total net weighing 1401.06 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(l) & 111(m) of the Customs Act, 1962. I also hold in unequivocal terms that the garment cloths used to conceal the gold paste recovered from the noticee, having Nil value would be liable for absolute confiscation under Section 119 of the Customs Act, 1962.***

**54.** As regard, of imposition of penalty under Section 112 of Customs, Act, 1962 in respect of Noticee Shri Anil B Soni, ***I find that in the instant case, the principle of mens-reas on behalf of noticee are established as the noticee has failed to follow the procedure and intentionally involved in smuggling of the gold.*** On deciding the penalty in the instant case, I also take into consideration the observations of Hon'ble Apex Court laid down in the judgment of M/s. Hindustan Steel Ltd Vs. State of Orissa; wherein the Hon'ble Apex Court observed that ***"The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or act in conscious disregard of its obligation; but not in cases where there is technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute."*** In the instant case, the noticee was attempting to smuggle the gold in form of paste and attempting to evade the Customs Duty by not declaring the derived gold bar net weighing 1401.06 grams having purity of 999.0 and 24Kt. Hence, the identity of the goods is not

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established and non-declaration at the time of import, is considered as an act of omission on his part. I further find that the noticee had involved himself and abetted the act of smuggling of the said gold bar weighing 1401.06 grams, carried by him. He has agreed and admitted in his statements that he had travelled from Bangkok to Ahmedabad with the said gold in form of paste concealed in clothes and underwear. Despite his knowledge and belief that the gold carried by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the noticees attempted to smuggle the said gold of 1401.06 grams, having purity 999.0 by concealment. Thus, it is clear that the noticee has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he knows very well and has reason to believe that the same is liable for confiscation under Section 111 of the Customs Act, 1962. Accordingly, I find that the noticee named Shri Anil B Soni is liable for the penalty under Section 112(a) & 112 (b) of the Customs Act, 1962 and I hold accordingly.

**54.1** Regarding imposition of penalty under Section 117 of Customs Act, 1962, I find that Section 117 of Customs Act, 1962 provide *for imposition of penalty on any person who contravenes any provision of the said Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, to be liable to a penalty not exceeding four lakhs rupees. The maximum amount of penalty prescribed under Section 117 initially at Rs. One lakh was revised upwards to Rs. Four lakhs, with effect from 01.08.2019.* The detailed discussions in the preceding paragraphs clearly prove that the noticee not only failed to fulfill the conditions but also failed to abide by the responsibilities reposed on them as per the provision of Customs Act. Hence, there are clear violations of the Section 77 & Section 79 of the Customs Act, 1962. In the instant case, the noticee accepted to carry the gold in form of paste for monetary benefit and involved himself in the smuggling of gold. Hence, it is, fit case for imposing penalty under Section 117 of Customs Act, 1962 on the noticee named Shri Anil B Soni.

**55.** **Now, I come to allegation in the Show Cause Notice that as to whether penalty should be imposed upon Shri Ketan/Chetan@Bangkok (Noticee No. 05) under Section 112 of Customs Act, 1962 and Section 117 of Customs Act, 1962 or otherwise.**

From the records available on file as documentary as well as digitally and voluntary statements tendered by all four noticees named (i) Shri Kaushikkumar Mahipatlal Patel (ii) Shri Anil Babulal Soni, Male (iii) Shri Rakeshkumar Dineshkumar Soni and (iv) Smt. Dimpalben Rakeshkumar Soni under Section 108 of Customs Act, 1962, I find that all the four noticee has mentioned that all the arrangements for stay at Bangkok was done by Shri Ketan/Chetan. From the statements and call details records of Shri Bharatbhai and Bahadurbhai, it is established that the Shri Ketan or Shri Chetan is one and same person who helped all the noticees at Bangkok on the direction of Shri Bharatbhai and Shri Bahadurbhai. From the investigation and digital evidences/records available in the file and as per voluntary statements tendered by all the noticees, I find that Shri Ketan/Chetan was the person who handed over the gold in paste form concealed in jeans and underwear in form of strips and packets. I find that sufficient opportunities were given to the noticee Shri Ketan/Chetan to submit his defense reply and to appear for personal hearing. I find that the noticee has neither submitted his defense submission, nor present himself before the Adjudicating authority at the time of personal hearing. From the facts, it is evident that the noticee is not bothered for ongoing adjudication process and has nothing to submit in his defense. Further, all the noticees have never questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in their voluntary statement tendered before DRI officers at any stage of investigation. Also, I find that at the time of personal hearing, Shri Rakeshkumar D Soni and Smt. Dimpalben R Soni again confirms that shri Chetan Chaudary had given the gold in paste form and asked to handover the same in Ahmedabad to Shri Bharatbhai. From the documentary evidences and as per the investigation, I find that Shri Chetan/Ketan was key person/facilitator who manages the stay and other expenses for the persons travelled to Bangkok on the direction of Shri Bharatbhai and Shri Bahadurbhai. I find from the statements of the all noticees from whose possession gold paste was recovered, that Shri Ketan/Chetan was the person who handed over the clothes containing gold paste to wear at the time of returning from Bangkok and accordingly, participated in the activity related to smuggling of gold and a part of organized smuggling. It is seen that the noticee Shri Lucky has involved himself in carrying, removing,

depositing, harbouring, keeping, concealing, selling or purchasing, **or in any other manner dealing with gold** in a manner which he knew or had reasons to believe that the same were liable to confiscation under the Act. His non-appearance before the Investigating Authority and even before the Adjudicating Authority during the entire process of investigation and adjudication respectively, details/data of Call Data Records and statements of Noticees (i) Shri Kaushikkumar Mahipatlal Patel (ii) Shri Anil Babulal Soni, (ii) Shri Rakeshkumar Dineshkumar Soni and (iv) Smt. Dimpalben Rakeshkumar Soni reveals that he was involved in the smuggling of the said derived gold bars. If the Noticee was a law-abiding citizen, he would have appeared before the DRI to prove his innocence or present himself before adjudicating authority to prove his non-involvement in the smuggling . It, is therefore, proved beyond doubt that the noticee Shri Ketan/Chetan @ Bangkok has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112(b) of the Customs Act, 1962. Further, the noticee has not appeared before the investigating officer to prove his innocence and not co-operated in the investigation, which makes him liable for penal action under Section 117 of Customs Act, 1962.

**56. Now, I come to allegation in the Show Cause Notice that as to whether penalty should be imposed upon Shri Vijay K. Rajput alias Shri Bahadurbhai (Noticee No. 06) under Section 112 of Customs Act, 1962 and Section 117 of Customs Act, 1962 or not.**

From the records available on file as documentary as well as digitally and voluntary statement tendered by Shri Kaushikkumar Mahipatlal Patel and Shri Anil Babulal Soni under Section 108 of Customs Act, 1962, I find that to and fro tickets for both the noticees i.e Shri Kaushikkumar Mahipatlal Patel and Shri Anil Babulal Soni were managed by Shri Bahadurbhai alias Shri Vijay K Rajput. I find from the voluntary statement of Shri Kaushikkumar Mahipatlal Patel wherein he admitted that he came in contact of Shri Bahadurbhai through a common friend Shri Ketan who was in Bangkok. From the statement, I observed that Shri Bahadurbhai alias Shri Vijay K Rajput and Shri Ketan @ Bangkok know each other already. Further, I also found from the statement tendered by Shri Anil Babulal Soni that he already known to Shri Bahadurbhai alias Shri

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Vijay k Rajput past 3-4 years and I also noticed that Shri Bahadurbhai alias Shri Vijay K Rajput offered Shri Anil Babulal Soni a sponsored trip to Bangkok and in returns he asked him to bring the gold. I also find under Statement of Shri Anil Babulal Bhai that Shri Bahadurbhai asked him to meet Ketan/Chetan at Bangkok for receiving gold while returning. Further, from the digital evidences gathered during the investigation viz. Call Details records and Subscriber Details records, I find that Shri Bahadurbhai was in constant touch with both noticees named Shri Kaushikkumar M Patel and Shri Anil B Soni and managed their to and fro tickets and made them contact with Shri Ketan/Chetan @ Bangkok. I find that the noticee has neither submitted his defense submission, nor present himself before the Adjudicating authority at the time of personal hearing. From the facts, it is evident that the noticee is not bothered for ongoing adjudication process and has nothing to submit in his defense. I also find from the statements of Shri Kaushikkumar M Patel and Shri Anil B Soni that there is an involvement of Shri Bahadurbhai alias Shri Vijay K Rajput in the organized smuggling as he was the one who recruited and managed the tickets of both notices and made them contact to Shri Ketan/Chetan at Bangkok who manages their stay and provided the clothes containing gold in paste form to both noticees while returning from Bangkok. Further, The noticees Shri Kaushikkumar M Patel and Shri Anil B Soni never questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in their voluntary statements tendered before DRI officers at any stage of investigation. It is seen that the noticee Shri Bahadurbhai alias Shri Vijay K Rajput has involved himself in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, **or in any other manner dealing with gold** in a manner which he knew or had reasons to believe that the same were liable to confiscation under the Act. It, is therefore, proved beyond doubt that the noticee Shri Bahadurbhai alias Shri Vijay K Rajput has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112(b) of the Customs Act, 1962. Further, the noticee has not appeared before the investigating officer to prove his innocence and not co-operated in the investigation, which makes him liable for penal action under Section 117 of Customs Act, 1962.

**57. Now, I come to allegation in the Show Cause Notice that as to whether penalty should be imposed upon Shri Bharatbhai (Noticee No. 07) under Section 112 of Customs Act, 1962 and Section 117 of Customs Act, 1962 or otherwise.**

From the records available on file as documentary as well as digitally and voluntary statement tendered by Shri Rakeshkumar D Soni and Smt. Dimpalben Rakeshkumar Soni under Section 108 of Customs Act, 1962, I find that to and fro tickets for both the noticees i.e Shri Rakeshkumar D Soni and Smt. Dimpalben Rakeshkumar Soni were managed by Shri Bharatbhai to whom Shri Rakeshkumar D Soni met at Ahmedabad. I find from the voluntary statement of Shri Rakeshkumar D Soni wherein he admitted that he came in contact with Shri Bharatbhai who asked him to smuggle the gold and in return he sponsored his trip of Bangkok. From the statement, I observed that Shri Bharatbhai and Shri Ketan/Chetan @ Bangkok know each other already and Shri Bahartbhai provided the contact details of Shri Ketan/Chetan to Shri Rakeshkumar D Soni. I also find under Statement of Shri Rakeshkumar D Soni that Shri Chetan/Ketan @ Bangkok handed over the clothes viz. jeans and underwear which contains the gold in paste form in various part of jeans. Further, from the digital evidences gathered during the investigation viz. Call Details records and Subscriber Details records, I find that Shri Bharatbhai managed their to and fro tickets and made them contact with Shri Ketan/Chetan @ Bangkok. I find that the noticee has neither submitted his defense submission, nor present himself before the Adjudicating authority at the time of personal hearing. From the facts, it is evident that the noticee is not bothered for ongoing adjudication process and has nothing to submit in his defense. I also find from the statement of Shri Rakeshkumar D Soni that there is an involvement of Shri Bharatbhai in the organized smuggling as he was the one who recruited and managed the tickets of both noticees and made them contact to Shri Ketan/Chetan at Bangkok who manages their stay and provided the clothes containing gold in paste form to both noticees while returning from Bangkok. Further, the noticees Shri Rakeshkumar D Soni and Smt. Dimpalben R Soni never questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in their voluntary statements tendered before DRI officers at any stage of investigation. Even during the personal

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hearing both have submitted that Shri Chetan Chaudhary handed over the gold in form of paste concealed in clothes at Bangkok and directed them to hand over the same to Shri Bharatbhai at Ahmedabad. Therefore, it is very crystal clear that Shri Ketan/Chetan @ Bangkok alongwith Shri Bharatbhai involved in organized smuggling. Therefore, the noticee Shri Bharatbhai has involved himself in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing, **or in any other manner dealing with gold** in a manner which he knew or had reasons to believe that the same were liable to confiscation under the Act. It, is therefore, proved beyond doubt that the noticee Shri Bharatbhai has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112(b) of the Customs Act, 1962. Further, the noticee has not appeared before the investigating officer to prove his innocence and not co-operated in the investigation, which makes him liable for penal action under Section 117 of Customs Act, 1962.

**58.** Accordingly, I pass the following Order:

### **ORDER**

- i.** I order **absolute confiscation** of 05 Gold bars weighing 5662.380 Grams having purity of 999.0/24Kt, extracted from the gold paste found in possession of Shri Kaushikkumar M Patel, Shri Anil B Soni, Shri Rakeshkumar D Soni and Smt. Dimpalben R Soni which was concealed in form of 04 strips and 01 packets by each of them separately in jeans and underwear worn by them having total Market value of **Rs. 3,67,14,872/-** (Rupees Three Crore Sixty Seven Lakhs Fourteen Thousand Eight Hundred Seventy-Two only) and placed under seizure under panchnama dated 30/31.01.2024 and seizure memo order dated 31.01.2024 under Section 111(d),111(l) and 111(m) of the Customs Act, 1962;
- ii.** I order absolute confiscation of 04 garments cloth worn by them and used to conceal the gold paste recovered from Shri Kaushikkumar M Patel, Shri Anil B Soni, Shri Rakeshkumar D Soni and Smt. Dimpalben R Soni respectively, having nil value, under Section 119 of the Customs Act, 1962.

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- iii. I impose a penalty of Rs.23,00,000/- (Rupees Twenty-Three Lakh Only) on **Shri Kaushikkumar Mahipatlal Patel** under the provisions of Section 112(a)(i) & Section 112(b)(i) of the Customs Act 1962.
- iv. I impose a penalty of Rs. 23,00,000/- (Rupees Twenty-Three Lakh Only) on **Shri Anil B. Soni** under the provisions of Section 112(a)(i) & Section 112(b)(i) of the Customs Act 1962.
- v. I impose a penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakh Only) on **Shri Rakeshkumar D. Soni** under the provisions of Section 112(a)(i) & Section 112(b)(i) of the Customs Act 1962.
- vi. I impose a penalty of Rs. 21,50,000/- (Rupees Twenty One Lakh Fifty Thousand Only) on **Smt. Dimpalben Rakeshkumar Soni W/o Shri Rakesh D. Soni** under the provisions of Section 112(a)(i) & Section 112(b)(i) of the Customs Act 1962.
- vii. I impose a penalty of Rs. 10,00,000/- (Rupees Forty Lakh Only) on **Shri Ketan/Chetan@ Bangkok** under the provisions of Section 112(b)(i) of the Customs Act 1962.
- viii. I impose a penalty of Rs. 10,00,000/- (Rupees Ten Lakh Only) on **Shri Vijay K. Rajput alias name as Shri Bahadurbhai** under the provisions of Section 112(b)(i) of the Customs Act 1962.
- ix. I impose a penalty of Rs. 10,00,000/- (Rupees Ten Lakh Only) on **Shri Bharatbhai** under the provisions of Section 112(b)(i) of the Customs Act 1962.
- x. I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) on **Shri Kaushikkumar Mahipatlal Patel** under the provisions of Section 117 of the Customs Act 1962.
- xi. I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) on **Shri Anil B. Soni** under the provisions of Section 117 of the Customs Act 1962.
- xii. I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) on **Shri Rakeshkumar D. Soni** under the provisions of Section 117 of the Customs Act 1962.
- xiii. I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) on **Smt. Dimpalben Rakeshkumar Soni W/o Shri Rakesh D. Soni** under the provisions of Section 117 of the Customs Act 1962.

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- xiv.** I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) on **Shri Ketan/Chetan@Bangkok** under the provisions of Section 117 of the Customs Act 1962.
- xv.** I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) on **Shri Vijay K. Rajput alias name as Shri Bahadurbhai** under the provisions of Section 117 of the Customs Act 1962.
- xvi.** I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) on **Shri Bharatbhai** under the provisions of Section 117 of the Customs Act 1962.

**59.** Accordingly, the Show Cause Notice No. DRI/AZU/GI-02/ENQ-10/2024 dated 22.07.2024 stands disposed of.

**(Shree Ram Vishnoi)**  
Additional Commissioner  
Customs, Ahmedabad

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DIN: 20250471MN000001569E

By SPEED POST A.D.

To,

- (i) Shri Kaushikkumar Mahipatlal Patel**, resident of B-15, Devbhumi Apartment, Nr. Kashiba School, Behind Ajay Tenament-5, Vastral, Ahmedabad-382415, Gujarat.
- (ii) Shri Anil B. Soni**, resident of 2000, Vinobabhavnenagar, Vinzol, Ahmedabad-382445, Gujarat.
- (iii) Shri Rakeshkumar D. Soni**, resident of 1-20-77, Tarbhoda No Pado, Ghivato, Patan, Gujarat-384265.
- (iv) Smt. Dimpalben Rakeshkumar Soni** W/o Shri Rakesh D. Soni, resident of 1-20-77, Tarbhoda No Pado, Ghivato, Patan, Gujarat-384265.
- (v) Shri Ketan/Chetan@Bangkok.**
- (vi) Shri Vijay K. Rajput alias name as Shri Bahadurbhai**, resident of 19/411, Shivanand Nagar, Amraiwadi, Ahmedabad-380026.
- (vii) Shri Bharatbhai.**

Copy to :-

1. The Principal Commissioner of Customs, Ahmedabad. (Kind Attn: RRA Section)
2. The Dy./Asstt. Commissioner of Customs (AIU), SVPIA, Ahmedabad.
3. The Dy./Asstt. Commissioner of Customs (TRC), Ahmedabad.
4. The Assistant/Deputy Director, DRI, AZU, Ahmedabad

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5. The System In charge, Customs HQ, Ahmedabad for uploading on official web-site i.e. <http://www.ahmedabadcustoms.gov.in>
6. Guard File.